DOCUMENT RESUME

ED 384 333 HE 028 446

TITLE	Guidelines for Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended. Revised Edition.
INSTITUTION	American Association of Collegiate Registrars and Admissions Officers, Washington, D.C.
REPORT NO	ISBN-0-929851-26-9
PUB DATE	95
NOTE	126p.
AVAILABLE FROM	AACRAO Distribution Center, P.O. Box 231, Annapolis Junction, MD 20701 ($25 for members, $35 for nonmembers).
PUB TYPE	Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Academic Records; Civil Liberties; *Compliance (Legal); Confidentiality; Educational Legislation; Family School Relationship; *Federal Legislation; Freedom of Information; *Higher Education; Legal Responsibility; Program Implementation; *Student Records; *Student Rights
IDENTIFIERS	*Family Educational Rights and Privacy Act 1974; Legal Information; Legal Procedures

ABSTRACT

This publication is designed to provide guidance, clarification of intent, and suggested implementation processes and procedures for officials of postsecondary educational institutions concerning the Family Educational Rights and Privacy Act of 1974 (FERPA), as Amended in 1988 and 1993. FERPA's purpose is to ensure certain student rights concerning their educational records such as their right to inspection and review, to make amendments, and to some control over the disclosure of information on the record. Chapter 1 provides background and further specifics on FERPA. Chapter 2 defines key terms. Chapter 3 describes compliance requirements. Chapter 4 suggests procedures and strategies for compliance. Chapter 5 discusses particular issues. Chapter 6 provides short answers to the most frequently asked questions about FERPA. Chapter 7 contains cases, mostly taken from actual situations, to test readers' knowledge and strengthen their understanding of FERPA. The resolution to each case is at the end of the chapter. Extensive appendixes contain the text of FERPA; 1988 regulations; discussion of FERPA and The Crime Awareness and Campus Security Act (1990); notice of proposed rulemaking on excluding law enforcement unit records from FERPA; the 1994 Amendment to FERPA; 1995 final regulations; Internal Revenue Code of 1954, Section 152; directory information items identified in two institutional surveys; and sample documents. An index is provided. (Contains 18 references.) (JB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

American Association of Collegiate Registrars and Admissions Officers

ED 384 333

Guidelines for Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it

☐ Minor changes have been made to improve reproduction quality

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

Revised Edition 1995

BEST COPY AVAILABLE

"PERMISSION TO REPRODUCE THIS MATERIAL IN **OTHER THAN PAPER COPY** HAS BEEN GRANTED BY

AACRAO

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

HE 028446

Prepared by
The Committee to Revise
A Guide to Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended

Guidelines for Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended

Revised Edition 1995

AACRAO
1910

Prepared by
The Committee to Revise
A Guide to Postsecondary Institutions for Implementation
of the Family Educational Rights and Privacy Act of 1974 as Amended

American Association of Collegiate Registrars
and Admissions Officers
Washington, DC

Library of Congress Cataloging-in-Publication Data

Guidelines for postsecondary institutions for implementation of the Family educational rights and privacy act of 1974, as amended / prepared by the Committee to revise A Guide to postsecondary institutions for implementation of the Family educational rights and privacy act of 1974, as amended. — Rev. ed.

p. cm.

Includes bibliographical references and index.

ISBN 0-929851-26-9

1. Student records—Law and legislation—United States.

2. Privacy, Right of—United States. 3. College registrars—Legal status, laws, etc.—United States. I. Committee to revise a Guide to postsecondary institutions for implementation of the Family educational rights and privacy act of 1974.

KF4156.5.G85 1995

342.73'0858—dc20 94-46876

[347.302858] CIP

The American Association of Collegiate Registrars and Admissions Officers, founded in 1910, is a nonprofit, voluntary, professional educational association of degree-granting postsecondary institutions, government agencies, private educational organizations, and education-oriented businesses in the United States and abroad. Its goal is to promote higher education, and further the professional development of members working in admissions, enrollment management, financial aid, institutional research, records and registration, scheduling, academic standards, and student progress.

EXECUTIVE STAFF, AACRAO OFFICE

Executive Director	Wayne E. Becraft
Associate Executive Director	Roger M. Swanson
Assistant Executive Director	Henrianne K. Wakefield
Assistant Executive Director	Cecilia A. Balazs

AACRAO OFFICE: One Dupont Circle, NW, Suite 330, Washington, DC 20036-1171
(202) 293-9161 / FAX (202) 872-8857

Copyright © 1995 the American Association of Collegiate Registrars and Admissions Officers. All rights reserved. No part of this book may be used or reproduced in any manner whatsoever without written permission of the publisher. Printed in the United States of America.

Additional copies of this publication may be obtained from AACRAO for $25 ($35 for nonmembers). For more information, contact the AACRAO Distribution Center, P.O. Box 231, Annapolis Junction, MD 20701; (301) 490-7651; FAX (301) 206-9789.

AACRAO is not liable for changes in information or federal regulations passed after this volume is published.

Contents

Preface vi

Acknowledgments vii

Chapter One. Introduction

1.1 Historical Background 1
1.2 Essence of the Act 1
1.3 To Whose Records Does the Act Apply? 2
1.4 To What Records Does the Act Apply? 2
1.5 Enforcement and Penalties 2
1.6 Conflict with State Law 2

Chapter Two. Definition of Terms 3

Chapter Three. Requirements for Compliance

3.1 Written Institutional Policy 5
3.2 Notice to Students of Their Privacy Rights 6
3.3 Students' Access to Their Education Records 6

Chapter Four. Procedures and Strategies for Compliance

4.1 Disclosure of Education Record Information 8
4.2 Challenge of the Contents of Education Records 9
4.3 Records of Requests and Disclosures 10
4.4 Institutional Records and Recordkeeping 10

Chapter Five. Issues

5.1 Electronic Transmission of Education Records (SPEEDE) 11
5.2 Facsimile Records (FAX) 12
5.3 Legitimate Educational Interest 12
  5.3.1 "School Officials" 12
  5.3.2 Articulating Legitimate Educational Interest 13
  5.3.3 Computer Access and Legitimate Educational Interest 13
5.4 Parental Access to Children's Education Records 13
  5.4.1 Biological, Custodial, and NonCustodial Parents 14
5.5 Standards for Defining Directory Information 14
5.6 Law Enforcement Records/Medical Treatment Records 14
5.7 State Databases 14
5.8 Use of the Social Security Number as a Student Identifier—The Federal Government's Position 15
5.9 Conflict with State Law 15

Chapter Six. What About ...?

6.1 Academic Standing 16
6.2 FERPA Rights Accorded Admitted vs. Enrolled Students 16
6.3 Anecdotal Notes on a Student 16
6.4 Annual Notice to Student 16
6.5 Campus Security/Police 16
6.6 Computer Access to Records 17
6.7 Crisis Situations/Emergencies 17

6.8 Deceased Students 17
6.9 Destruction of Requests for Access, Records of Disclosure, and Education Records 17
6.10 IRS Summons 17
6.11 Letters of Recommendation 17
6.12 The Media 17
6.13 Parent Address 18
6.14 Penalties for Violating FERPA Regulations 18
6.15 Postsecondary Feedback to High Schools 18
6.16 Posting of Grades by Faculty 19
6.17 Recordkeeping of Disclosures 19
6.18 Releasing Nondirectory Information Over the Phone 19
6.19 Scholarship Committees 19
6.20 Student Computer Access to His/Her Own Education Records 19
6.21 Student Directories 20
6.22 Student Right to Know/Campus Security Act and FERPA 20
6.23 The Student's Right to Review Records 20
6.24 Student's Right of Nondisclosure of Education Record Information 20
6.25 Students' Rights After Ceasing Attendance or Graduating 20
6.26 Subpoenas 21
    6.26.1 How Subpoenas Are Created 21
    6.26.2 Jurisdiction 21
    6.26.3 Being Presented with a Subpoena 21
    6.26.4 Rights of a Person When Served with a Subpoena 22
    6.26.5 Duties in Responding to a Subpoena 23
    6.26.6 What FERPA Says About Subpoenas 23
    6.26.7 Notifying the Student 23
    6.26.8 Complying with the Subpoena 23

Chapter Seven. How Would You Handle ...?

7.1 Legitimate Educational Interest 24
    7.1.1 The United Campus Ministry Request 24
    7.1.2 The Continuous Search for Money 24
    7.1.3 The Recommendation 24
7.2 Subpoenas 25
    7.2.1 Subpoena 1 25
    7.2.2 Subpoena 2 26
    7.2.3 Subpoena 3 27
7.3 The Media 28
    7.3.1 The Release of Confidential Information to the Media 28
    7.3.2 The Scholarship Awards Winners 28
    7.3.3 The Newspaper Reporter 28
7.4 Surveys/Research Requests 29
    7.4.1 The NSF Request 29
    7.4.2 The ETS/GRE Request 30
    7.4.3 Postsecondary Feedback 31
7.5 Deceased Students 32
    7.5.1 Request for Information on Judith Resnik 32
7.6 FAX/Decentralized Online Inquiry 33
    7.6.1 The FAX Request 33
    7.6.2 Online Inquiry 33
7.7 Parents and Spouses 33
    7.7.1 Request from Father for Information on Daughter 33
    7.7.2 Parent Requests Transcript for Son 34
    7.7.3 Wife Requests Information on Husband 34
    7.7.4 The Estranged Wife 34
    7.7.5 The "Closed Record" Request 35

7.8 Emergencies 35
  7.8.1 The Emergency 35
  7.8.2 The Western Union Delivery 35
7.9 Relations with Law Enforcement Units 35
  7.9.1 The Request for Student Schedules 35
  7.9.2 Parking Tickets and Graduating Seniors 35
  7.9.3 The Arrested Student 36
7.10 Admissions 36
  7.10.1 The "Denied" Applicant 36
7.11 Third Party Verification 36
  7.11.1 The Departmental Phone Call 36
  7.11.2 Verification of Degree 36
  7.11.3 Verification of Degree 36
7.12 Students' Requests Relating to Their Education Records 36
  7.12.1 The Phone Call for Grades 36
  7.12.2 "Confidential References" 37
  7.12.3 Student Request Not to Release Education Information 37
7.13 Matters Financial 38
  7.13.1 A Student Asks to See His Records 38
  7.13.2 The Defaulted Loan; The Withheld Transcript 38
7.14 Miscellaneous Items 38
  7.14.1 The Intern 38
  7.14.2 The INS Request 38
How the Cases Were Resolved 38

Appendices

Appendix 1. The Family Educational Rights and Privacy Act of 1974 as Amended 46
Appendix 2. 1988 Final Regulations 49
Appendix 3. FERPA and the Crime Awareness and Campus Security Act of 1990 70
Appendix 4. FERPA and the Higher Education Amendments of 1992: Notice of Proposed Rulemaking (NPRM) on Excluding Law Enforcement Unit Records from FERPA 72
Appendix 5. 1994 Amendment to FERPA Requirement of Notifying a Student Upon Receipt of a Grand Jury/Law Enforcement Subpoena 75
Appendix 6. 1995 Final Regulations—Law Enforcement Unit Records Excluded from FERPA 76
Appendix 7. Internal Revenue Code of 1954, Section 152(including Amendments and Applicable Sections of the Tax Reform Act of 1976); and Title 38, United States Code, Veterans Benefits . . 83
Appendix 8. Directory Information Items Identified in a 1988 AAU and 1991 AACRAO Survey of Member Institutions 87
Appendix 9. Sample Compliance Documents 88
  Request to Prevent Disclosure of Directory Information 88
  Student Request to Inspect and Review Education Records 89
  Request to Review Education Records 90
  Sample Request for Formal Hearing 91
  Model Notification of Rights Under FERPA 92
Appendix 10. Student Worker Statement of Understanding of the Family Educational Rights and Privacy Act . . 93
Appendix 11. Institutional Statements on Legitimate Educational Interest 94
Appendix 12. Forms for Providing Computer Access to a Student Information System 95
Appendix 13. Sample Agreement to Change SSN to Another Personal Identifier 106
Appendix 14. Sample Institutional FERPA Policy Statement 107
Appendix 15. Sample Notice to Student of Intent to Comply with a Subpoena 111

Bibliography 112

Index 113

Preface

The primary purpose of this AACRAO publication is to provide guidance, clarification of intent, and suggested implementation processes and procedures for officials of postsecondary educational institutions concerning the Family Educational Rights and Privacy Act of 1974, as Amended (subsequently referred to as "the Act"). Further, it is intended to serve all components of educational institutions that possess, maintain, process or utilize education records on students and to assist those officials charged with developing, promulgating and implementing those institutional policies, procedures and practices required for compliance with the Act and its revisions.

Family Educational Rights and Privacy Act (FERPA) was enacted by the United States Congress in 1974. The AACRAO *Guide to Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974* was first printed in 1976, and subsequently reprinted nine times. This *Guide* has proven to be a very useful document for institutions developing policies and procedures to implement the requirements of the Act.

This publication is a revision of the AACRAO *Guide*. It has been prepared conform to legislative revisions that have occurred since the initial enactment of FERPA in 1974. The 1988 and 1993 amendments to the regulations implementing the Act are addressed in this publication. The Crime Awareness and Campus Security Act (1990) and its impact on FERPA is also discussed briefly. In addition, the experiences gained by higher education professionals in administering these regulations have been incorporated to help clarify and illuminate those FERPA issues which have been encountered over the 20 years since FERPA's enactment.

A Preliminary Caution

As with most publications dealing with legal issues, interpretations and new regulations can amplify and change what is included here. The area of the electronic transmission of student education record information is still in its infancy. The Committee believes the information and suggestions made in this document regarding this new technology will change significantly within the next several years as the experiences of an increasing number of higher education professionals provide a potentially significant body of knowledge not currently available to the Committee.

The reader should note that guidelines by definition are interpretive and, therefore, are not to be construed as the law. These guidelines are intended for use along with the Act and its published regulations. While consulting this document, the reader should also be aware of any applicable privacy or public information laws of a state which may be at variance with FERPA (see Chapter 1.6 of this publication for additional information on this topic).

The Committee to Revise the AACRAO *Guide to Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act, as Amended:*

- *Patrick R. Forte*, University Registrar, University of Medicine and Dentistry of New Jersey
- *Pinhas Friedenberg*, Dean of Enrollment Management, Touro College (New York)
- *Mary Beth Myers*, Assistant Registrar, Indiana University
- *Richard A. Rainsberger*, Registrar, Central College (Iowa)
- *Joseph Roof*, Dean of Admissions and Records Systems, Seminole Community College (Florida)

Acknowledgments

Particularly in the original edition and to some extent in this update, the American Association of Collegiate Registrars and Admissions Officers (AACRAO) was assisted by representatives of the following associations in developing a comprehensive and concise set of recommended institutional guidelines and procedures for postsecondary institutions implementing this law: American Council on Education, National Association of College and University Attorneys, The College Board, and Educational Testing Service.

Additionally, with this revised edition, the Committee is deeply grateful to and wishes to thank the following individuals and colleagues who read the final draft and contributed many significant suggestions and cogent comments which have increased the overall quality, usefulness, legal integrity, and clarity of this publication:

- Philip Burling, Attorney, Foley Hoag & Eliott, Boston
- Sam Conte, University Registrar, University of Pittsburgh
- Randall Dahl, Director of Admissions and University Registrar, University of Alabama
- Herb Evert, Associate Registrar, University of Wisconsin-Madison
- Joan Gordon, General Counsel, Montgomery College Central Administration (Maryland)
- M. Louise Johnson, Registrar, Southwest Texas State University
- LeRoy Rooker, Director, Family Policy Compliance Office, U.S. Department of Education
- Joan E. Van Tol, Corporate Counsel/Executive Assistant to the President, Law School Admission Services

Particularly from this group, the Committee recognizes the contributions of LeRoy Rooker, Director, Family Policy Compliance Office. Mr. Rooker's full cooperation, unbounded patience, ready availability to answer questions, and intimate knowledge of FERPA were invaluable assets to the Committee as it worked through the planning, development and completion of this publication. A true friend of AACRAO, Mr. Rooker deserves the sincere thanks and appreciation from those professionals who will use the information from this publication to administer FERPA policy on their campuses.

The Committee also thanks and acknowledges the efforts of Dr. Mareleyn Schneider, Chair of the Department of Sociology at Yeshiva University, for her work in developing the 1991 AACRAO questionnaire on FERPA and to Emily Lievense, Supervisor—Systems and Statistics, Indiana University, who compiled the data and provided statistical information from that instrument. This questionnaire was sent to a randomly selected group of 500 colleges and universities. A 51% response rate enabled the Committee to identify key areas and topics that needed to be discussed and included in this document.

Finally, the Committee deeply appreciates the support of the AACRAO Board of Directors and AACRAO Executive Director Wayne Becraft for their encouragement and patience while this document was coming to fruition. Without that support, this publication would not have been possible.

OFFICERS OF THE ASSOCIATION, 1993-94

President: Nancy C. Sprotte, Director of Admissions and Records, San Diego State University, San Diego, CA

President-Elect: Stanley E. Henderson, Director of Enrollment Management and Admissions, Western Michigan University

Past President: Jeffrey M. Tanner, Associate Dean of Admissions and Records, Brigham Young University, UT

Vice President for Enrollment Management, Admissions, and Financial Aid: Walter H. Washington, Assistant Dean, College of Business Administration, University of Illinois, Chicago

Vice President for International Education: William Paver, Associate Director of Admissions and Assistant Dean of Graduate Studies, The University of Texas at Austin

Vice President for Records and Registration: Frederick A. Fresh, University Registrar, Clark Atlanta University, GA

Vice President for Professional Development, Research, and Publications: William Haid, Registrar and Director of Enrollment Services, University of Colorado at Boulder

Vice President for Regional Associations and Institutional Issues: Carol Medders, Director of Admissions and Enrollment Services and Instructor, School of Health Related Professions, University of Alabama at Birmingham

Secretary-Treasurer: Paul H. Anderson, Associate Dean and University Registrar, Furman University, SC

Introduction

CHAPTER ONE

The purpose of the Family Educational Rights and Privacy Act is to afford certain rights to students concerning their education records. The primary rights afforded are the right to inspect and review the education records, the right to seek to have the records amended and the right to have some control over the disclosure of information from the records.

Educational institutions and agencies are required to conform to fair information practices. This means that persons who are subjects of data systems (i.e., students at an institution) must:

- be informed of the existence of such systems,
- have identified for them what data about them are on record,
- be given assurances that such data are used only for intended purposes,
- be given the opportunity to request an amendment or correction to their records and,
- be certain that those responsible for data systems take reasonable precautions to prevent misuse of the data.

Although the Act does not require it, those responsible for data systems are obliged to consider properly disposing of, or destroying, information when the conditions under which that information was collected no longer exist and there are no legal restrictions preventing such disposal.

1.1 HISTORICAL BACKGROUND

On June 17, 1976, the Department of Health, Education, and Welfare issued the initial final regulations in the *Federal Register* for the Family Educational Rights and Privacy Act of 1976 (P.L. 93-568, Sec. 2), as amended (P.L. 93-568, Sec. 2; 20 U.S.C. 1232g), more commonly known as the "Buckley Amendment." An additional document relating to the Act appeared in the June 17, 1976 issue of the *Federal Register*.

When the Department of Education was established, the implementing regulations were transferred to the Department of Education and codified in Part 99 of Title 34 of the *Code of Federal Regulations* (34 CFR 99). Slightly modified final regulations were issued in the *Federal Register* on May 9, 1980, Vol. 45, No. 92. In 1988 revised final regulations to the Family Educational Rights and Privacy Act were promulgated (34 CFR 99, found in appendix 2). The stated purpose of that revision was to simplify and clarify the previous provisions and to reduce, where possible, the regulatory burden on colleges and universities. In 1990 the Crime Awareness and Campus Security Act modified the disclosure rules in FERPA (see chapter 4.1, 3 (l)). These changes to FERPA were published in the *Federal Register* on January 7, 1993 (see appendix 3).

FERPA was amended by the Higher Education Amendments of 1992 which excluded, under certain conditions, law enforcement records of an institution of higher education from the provisions of FERPA (see *Federal Register*, Department of Education, 34 CFR 99, Notice of Proposed Rule Making, December 14, 1993, pp. 65298-65300, see Appendix 4). The final regulations regarding law enforcement records were published in the *Federal Register* on January 17, 1995 (see Appendix 6).

Copies of FERPA, the 1988 final regulations, the 1990, 1992, 1994, and 1995 changes, including the final regulations on law enforcement records are included in the appendices. Additionally, the reader should always check to see if the Department of Education has issued any regulations subsequent to January 1995.

1.2 ESSENCE OF THE ACT

FERPA deals specifically with the education records of students, affording them certain rights with respect to those records. For purposes of definition, education records are those records which are 1) directly related to a student and 2) maintained by an institution or a party acting for the institution.

FERPA gives students who reach the age of 18 or who attend a postsecondary institution the right to inspect and review their own education records. Furthermore, students have other rights including the right to request amendment of records and to have some control over the disclosure of personally identifiable information from these records. Institutions may grant a student more rights than those guaranteed in the Act.

FERPA applies to all schools that receive funding under most programs administered by the Secretary of Education (c.f. 34 CFR 99.1). Most postsecondary institutions, both public and private, generally receive such funding and must, therefore, comply with FERPA.

Institutions must annually notify students currently in attendance of their rights by any means that are reasonable, such as publication of a notice in the student handbook, catalog, or student newspaper. (See appendix 9 for a sample of an annual notification statement.) The regulations do not specify the means to be used. Schools are not required by FERPA to notify former students of their FERPA rights.

Institutions may not disclose information contained in education records without the student's written consent except under conditions specified in the Act. An institution is not required to disclose information from a student's education records to the parents of dependent students but may exercise its discretion to do so. It is the responsibility of an institution to ensure that information is not improperly disclosed to the parents of students.

1.3 TO WHOSE RECORDS DOES THE ACT APPLY?

FERPA applies to the education records of persons who are or have been in attendance in postsecondary institutions, including students in cooperative and correspondence study programs. FERPA does not apply to records of applicants for admission who are denied acceptance or, if accepted, do not attend an institution. Furthermore, rights are not given by FERPA to students enrolled in one component of an institution who seek to be admitted in another component of a school (e.g., a student, admitted to one college within a university, but denied admission in another college, does not have any FERPA rights in the college which denied him/her admission).

1.4 TO WHAT RECORDS DOES THE ACT APPLY?

The Act applies to all education records maintained by a postsecondary institution, or by a party acting for the institution, which are directly related to a student. Records containing a student's name, social security number or other personally identifiable information, in whatever medium, are covered by FERPA unless identified in one of the Act's excluded categories (see "Education Records" in chapter 2 for excluded categories).

1.5 ENFORCEMENT AND PENALTIES

Responsibility for administering the Act has been assigned to the Family Policy Compliance Office within the Department of Education. This office reviews and investigates complaints and attempts to bring about compliance through voluntary means. The penalty for noncompliance with Federal regulations can be withdrawal of Department of Education funds from the institution, but action to terminate funding generally will be taken only if compliance cannot be secured by voluntary means.

1.6 CONFLICT WITH STATE LAW

It should be noted that FERPA may be more permissive than the privacy and public information laws of some states. If a conflict exists between the Family Educational Rights and Privacy Act of 1974 and state or local law, and if an institution determines that it cannot comply with the requirements of the Act, it should advise the Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202-4605; (202) 260-3887; FAX: (202) 260-9001, within 45 days of that determination, giving the text and legal citation of the conflicting law. These guidelines, therefore, should not be interpreted to reduce the stringency of such State laws. They counsel common sense, good judgment, perspective, and integrity for compliance by postsecondary institutions in the implementation of the Act. This information is also found in chapter 5.9 of this publication.

The remainder of this document sets forth recommendations and procedures to help institutions comply with the Act,

Definition of Terms

CHAPTER TWO

Understanding key terms is essential to the interpretation of the Act and the final regulations for its implementation. Some definitions which carry substantive meaning for understanding the Act are listed here for the convenience of the reader. The regulations, as contained in the appendices to this *Guide*, provide most of the definitions found below.

Act: Refers to the Family Educational Rights and Privacy Act of 1974 as amended, enacted as Section 438 of the General Education Provisions Act (20 U.S.C. 1232g).

Attendance: Includes but is not limited to a) attendance—in person or by correspondence study (program) and b) the period during which a person is working under a work-study (cooperative) program.

CFR: Code of Federal Regulations. The annual cumulation of executive agency regulations published in the daily *Federal Register*, combined with regulations issued previously that are still in effect. . . . The CFR contains the general body of regulatory laws governing practice and procedure before federal administrative agencies. The regulations pertaining to FERPA are found in 34 CFR 99 (see appendices 2 through 6).

Directory Information: May include such student information as the student's name, address, telephone number, date and place of birth, major fields of study, participation in officially recognized activities and sports, weight and height of athletic team members, photograph, dates of attendance, degrees and awards received, most recent educational institution attended, and other similar information as defined by the institution which would not generally be considered harmful to the student, or an invasion of privacy if disclosed.

Disciplinary Action or Proceeding: Means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

Disclosure: Is defined as permitting access to or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein to any party, orally, in writing, by electronic means, or by any other means.

EDI (Electronic Data Interchange): Utilizes standard data formats for transmitting data from one computer to another.

Educational Institution (or Agency): Generally means any public or private agency or institution which receives funds from any federal program under the administrative responsibility of the Secretary of Education. The term refers to the institution as a whole, including all of its components (e.g., schools or departments in a university). The 1988 Regulations list several funded programs to which FERPA does not apply. See the *Federal Register*, 4/11/88, p. 11943; 34 CFR 99.1 (b) (Appendix 2).

Education Records: Means those records directly related to a student and maintained by the institution or by a party acting for the institution. The term "education records" does not include the following:

- records of instructional, supervisory, administrative, and certain educational personnel which are in the sole possession of the maker thereof, and are not accessible or revealed to any other individual except a substitute who performs on a temporary basis (as defined in the institutional personnel policy) the duties of the individual who made the records.

- records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.

- records relating to individuals who are employed by the institution, which are made and maintained in the normal course of business, relate exclusively to individuals in their capacity as employees, and are not available for use for any other purpose. (Records of individuals in attendance at an institution who are employed as a result of their status as students are education records, e.g., work-study.)

- records relating to a student (see the definition of "eligible student" below) which are a) created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, acting in his/her professional capacity or assisting in a paraprofessional capacity; b) used solely in connection with the provision of treatment to the student; and 3) not disclosed to anyone other than individuals providing such treatment, so long as the records can be personally reviewed by a physician or other appropriate professional of the student's choice. (Appropriateness may be determined by the institution.) "Treatment" in this context does not include remedial educational activities or activities which are part of the program of instruction at the institution.

- records of an institution which contain only information relating to a person after that person is no longer a student at the institution (e.g., information gathered on the accomplishments of alumni).

Eligible Student: Refers to a student who has reached the age of 18 or is attending an institution of postsecondary education. Since these guidelines are specifically for postsecondary institutions, "student" as used in this document is presumed always to refer to an eligible student. In nonpostsecondary institutions, parents of students have additional rights not covered in this guide. In postsecondary institutions the rights accorded to, and the consent required of, the parents shall only be accorded to, and required of, the eligible student. (For additional information, see chapter 5.4 of this publication.)

Financial Aid: Means a payment of funds to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

Institution of Postsecondary Education: Refers to an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided.

Law Enforcement Unit: Means any individual or other component of an institution, including commissioned police officers and noncommissioned security guards, officially authorized by the institution to enforce any local, State, or federal law and maintain the physical security and safety of the institution. (Although the unit may perform other nonlaw enforcement functions, it does not lose its status as a law enforcement unit.)

Law Enforcement Unit Records: Means those records, files, documents, and other materials that are 1) created by a law enforcement unit, 2) created for a law enforcement purpose, and 3) maintained by the law enforcement unit. Law enforcement records do not include: 1) records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational institution other than the law enforcement unit; 2) records created and maintained by a law enforcement unit exclusively for non-law enforcement purposes such as a disciplinary action or proceeding conducted by the institution.

Legitimate Educational Interest: Means the demonstrated need to know by those officials of an institution who act in the student's educational interest, including faculty, administration, clerical and professional employees, and other persons who manage student record information. (Although the Act does not define "legitimate educational interest," it states that institutions must establish their own criteria, according to their own procedures and requirements, for determining when their school officials have a legitimate educational interest in a student's education records. This is a recommended definition. Sample institutional statements on legitimate educational interest are found in appendix 11.)

Parent: Includes a parent, a guardian, or an individual acting as a student's parent in the absence of a parent or a guardian. (For additional information, see chapter 5.4 of this publication.)

Party: Refers to an individual, agency, institution, or organization.

Personally Identifiable: Means data or information which include 1) the name of the student, the student's parent, or other family members; 2) the student's address; 3) a personal identifier such as a social security number or student number; or 4) a list of personal characteristics, or other information which would make the student's identity easily traceable.

Record: Means any information or data recorded in any medium (e.g., handwriting, print, tapes, film, microfilm, microfiche, any form of electronic data storage).

Regulations, The: Final revised regulations related to FERPA, approved in 1988, amended in 1990 and 1992, 1994, and 1995 and found in appendices 2 through 6 of this publication. Also cited in this publication as 34 CFR 99.

School Officials: Are those members of an institution who act in the student's educational interest within the limitations of their need to know. These may include faculty, administration, clerical and professional employees and other persons who manage student education record information. (Although the Act does not define "school officials," it states that institutions must establish their own criteria, according to their own procedures and requirements for determining them. This is a recommended definition.)

Student: Includes any individual for whom an educational institution maintains education records. The term does not include an individual who has not been in attendance at the institution. An individual who is or has been enrolled in one component unit of an institution, who applies for admission to a second unit, has no right to inspect the records accumulated by the second unit until enrolled therein.

U.S.C.: United States Code. A compilation of all federal legislation organized into 50 titles. Revised every six years with supplementary volumes issued in intervening years. The legislation related to FERPA is found in 20 U.S.C. 1232g (see appendix 1).

Requirements for Compliance

CHAPTER THREE

To comply with all of the provisions of the Act, its regulations, and disclosure provisions, each educational institution must take three basic steps as detailed in this section under "Written Institutional Policy," "Notice to Students of Their Privacy Rights," and "Students' Access to Their Education Records."

3.1 WRITTEN INSTITUTIONAL POLICY

Each institution must establish a written policy and procedures on how the institution complies with the Act. This statement must be provided to any student upon request. It should also be made available to any other interested parties. This institutional document will describe institutional policies and procedures in areas of access, release, and challenge of education records, and will inform students where education records are kept. This requirement provides a great measure of institutional autonomy in establishing local policy and procedures and establishing institutional control of its responsibilities under the Act. This policy-making requirement should be taken most seriously.

This policy document must:

1. inform students annually of their rights and specify how students will be informed of those rights. (See appendix 9)
2. specify institutional intent to permit students to inspect and review their education records (see "Students' Access to Their Education Records," chapter 3.3).
   a. provide a statement of procedure for the inspection and review of education records and for obtaining copies thereof.
   b. provide a description of circumstances that may establish legitimate cause for the denial of a request for a copy of an education record (e.g., a copy of the academic record for which a financial "hold" exists, or a transcript of an original or source document which exists elsewhere).
   c. provide a schedule of fees for copies of education records.
3. provide an all-inclusive list of types and location of education records including the titles and addresses of the officials responsible for those records.
4. inform students that no personally identifiable information from education records will be disclosed without their prior written consent except when prior written consent is not required by the Act or the implementing regulations (see "Disclosure of Education Record Information," chapter 4.1).
5. include a statement which indicates whether the institution has a policy of disclosing personally identifiable information from education records to school officials who have been determined to have a legitimate educational interest and a specification of the criteria for determining who will be considered "school officials" and what "legitimate educational interests" will entitle school officials to have access to education records (see "Definition of Terms," chapter 2, and "Legitimate Educational Interest," chapter 5.3). N.B. If institutions wish to disclose information about students to their parents by any established procedure (see "Disclosure of Education Record Information," chapter 4.1), such procedures should be explicitly stated in the written institutional policy.
6. specify which items of information will be designated by the institution as public or Directory Information.
7. maintain records of requests for access to, and disclosure of, personally identifiable information and permit students to review those records (see "Records of Requests and Disclosures," chapter 4.3).
8. provide students with an opportunity to seek amendment to or correction of education records (see "Challenge of the Contents of Education Records," chapter 4.2) by:
   a. considering a request to correct or amend education records containing inaccurate, misleading, or incomplete information.
   b. advising students of their rights to a hearing on the issue, if education records are not corrected or amended.

  c. permitting a student, if the institution decides as a result of a hearing not to amend the records in accordance with the student's request, to place a statement in the education record in question commenting upon the information therein, and/or setting forth any reason for disagreement with the institutional decision not to correct or amend the record. Such a statement shall become a part of the information contained in the education record and will be disclosed with it. A sample institutional policy statement is found in appendix 14.

3.2 NOTICE TO STUDENTS OF THEIR PRIVACY RIGHTS

The institution must inform students of their rights under the Act. Two types of notification are required.

1. Institutions must annually notify current students of their rights under the Act (former students need not be notified). The method of annual notification is left to the discretion of the institution, as long as the means employed are reasonably effective to communicate those rights. For example, it may be met by individual student notification or by publication in college catalogs, schedules, or student newspapers. The annual notice must specify student rights covered by the Act, including the right to:
   a. inspect and review information contained in education records (see "Students' Access to Their Education Records," chapter 3.3).
   b. request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights (see "Challenge of the Contents of Education Records," chapter 4.2).
   c. consent to disclosure, with certain exceptions specified in the Act, of personally identifiable information from education records (see "Disclosure of Education Record Information," chapter 4.1).
   d. secure a copy of the institutional policy, which includes the location of all education records (see "Written Institutional Policy," chapter 3.1 and appendix 14).
   e. file complaints with the Department of Education concerning alleged failures by institutions to comply with the Act. Written complaints should be directed to The Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202-4605; (202) 260-3887, FAX: (202) 260-9001.
2. Institutions must give public notice of the categories of personally identifiable information which the institution has designated as public or Directory Information.
   a. Types of information which may be designated as public or Directory Information are listed in "Definition of Terms" (chapter 2) of these guidelines.
   b. Items of Directory Information may be "grouped" into categories for release to the public for specific purposes. In such cases, institutions may restrict the dissemination of an entire category if the student requests exclusion of any items of directory information.
   c. Categories of information designated as public or Directory Information may be included in the annual notice. The Act provides no additional direction regarding how often, or by what means, public notice must be given; however, it seems prudent to assume that public notice should be given annually.
   d. Specific procedures must be outlined to inform students how to withhold categories of public or Directory Information. Students must be given a specific period of time within which they must inform institutions, in writing, that such categories of information are to be withheld (see "Disclosure of Education Record Information," chapter 4.1). Although not a FERPA requirement, institutions should alert students to the possible undesirable consequences of withholding directory information. Institutions are advised to formulate procedures which will permit students to make informed decisions when they exercise their right to exclude directory information (see chapter 6.24).
   e. To insure that the rights of students concerning release of information are upheld and to ease the burden of institutional recordkeeping, it is recommended that students be required to file requests for nondisclosure on an annual basis if withholding of directory information is desired; therefore, such requests need only be honored for one academic year or a shorter period of time if it suits the student's purpose.
   f. Institutions may disclose directory information about former students without meeting the notification requirements. However, if a student—at his/her last opportunity as a student—requested that directory information not be disclosed, the institution must continue to honor that request until informed to the contrary by the former student.

Assistance with the preparation of an annual notification statement to students can be found in appendix 9.

3.3 STUDENTS' ACCESS TO THEIR EDUCATION RECORDS

The following requirements on students' rights of access, including limitations on those rights and conditions and procedures under which students may waive those rights, must be brought to the attention of those responsible for education records within the institution.

1. Students and former students have rights to inspect and review their education records.
2. Procedures must be developed to permit students to inspect and review education records (except as limited in paragraph 3c below) within a maximum of 45 days after they request to do so. The right of inspection and review includes:

a. the right to an explanation and interpretation of the record.

b. the right to a copy of the education record when failure to provide a copy of the record would effectively prevent the student from inspecting and reviewing the record. A copy may be refused, but only if, in doing so, the institution does not limit the student's right to inspect and review that record.

3. Limitations exist on students' rights to inspect and review their education records. The institution is not required to permit students to inspect and review the following:

   a. financial information submitted by parents.

   b. confidential letters and recommendations placed in their files prior to January 1, 1975, provided these letters were collected under established policies of confidentiality and were used only for the purposes for which specifically collected.

   c. confidential letters and statements of recommendation, placed in the records after January 1, 1975, to which the student has waived his or her right to inspect and review and that are related to the student's admission, application for employment or job placement, or receipt of honors (see section 4 below).

   d. education records containing information about more than one student; however, in such cases the institution must permit access to that part of the record which pertains only to the inquiring student.

4. Students may waive any or all of their rights to review confidential letters and statements of recommendation under the Act. The right of waiver is subject to the following conditions:

   a. that institutions do not require waivers.

   b. that no institutional service or benefit be denied students who fail to supply waivers (although institutions are free to request waivers).

   c. that the documents to which students have waived the right to access are used only for the purposes for which collected. If used for other purposes, the waivers are void and the documents may be inspected by students. Institutions would be well advised to assure all parties concerned that the instruments used for soliciting recommendations and evaluations contain the specific purposes for which they will be used and the time frame in which such forms will be destroyed.

   d. that the waivers are in writing and signed by the students. Students may waive their rights to inspect and review either individual documents or classes of documents (e.g., part or all of an admission or job placement file). They may revoke the waiver in writing, but, by revoking it, they do not have the right to inspect and review documents collected while the waiver was in force.

   N.B. When "applicants" who waive their rights to access documents become students, they may specifically request and be given the names of all individuals who submitted letters and statements of recommendation for them.

5. The regulations contain only one restriction pertaining to the destruction of records. Once students have requested access to their education records, such students' records cannot be destroyed until inspection and review have been provided. These guidelines call attention to two additional items that an institution must not destroy unless the records to which they pertain are destroyed: a) "explanations" placed in the records by students as a result of a request for amendment that has been denied (see chapter 4.2), and b) records of disclosures and requests for disclosures.

   However, it is recommended that those responsible for records systems destroy information contained in student records and files when it is no longer valid and/or useful. (The intent of the Act would probably be well served if files were regularly purged of such items and letters of recommendations once they have been used for their original purpose.)

Procedures and Strategies for Compliance

CHAPTER FOUR

To fulfill the basic requirements for compliance with the Act, each educational institution must prevent improper disclosure of personally identifiable information from education records, provide opportunity for challenge of the contents of education records as required by FERPA and the regulations, and maintain adequate records of requests and disclosures as detailed in this chapter.

4.1 DISCLOSURE OF EDUCATION RECORD INFORMATION

1. Institutions shall obtain written consent from students before disclosing any personally identifiable information from their education records (with the exceptions as noted in sections 2, 3, 4, and 5 below). Such written consent must:
    a. specify the records to be released,
    b. state the purpose of the disclosure,
    c. identify the party or class of parties to whom disclosure may be made, and
    d. be signed and dated by the student.
2. Institutions must disclose education records or components thereof without written consent to students who request information from their own records.
3. Institutions may disclose education records or components thereof without written consent of students to:
    a. authorized representatives of the following for audit or evaluation of Federal- and State-supported programs, or for enforcement of or compliance with Federal legal requirements which relate to those programs (see 34 CFR 99.35 for additional conditions that must be met):
        i. the Comptroller General of the United States,
        ii. the Secretary of the Department of Education,
        iii. state educational authorities.
    b. State and local officials to whom disclosure is specifically required by State Statute adopted prior to November 19, 1974.
    c. Veterans Administration officials (not covered by FERPA but specified under Title 38, Section 1790 (c), United States Code; see appendix 7).
    d. other school officials within the institution determined by the institution to have a legitimate educational interest (see chapter 5.3).
    e. officials of other institutions in which a student seeks or intends to enroll on the condition that the issuing institution makes a reasonable attempt to inform the student of the disclosure unless the student initiates the transfer, or the written policy of the institution (discussed earlier) includes a notice that the institution forwards education records to other institutions that have requested the records in which the student seeks or intends to enroll (see 34 CFR 99.34 for additional conditions that must be met).
    f. persons or organizations providing financial aid to students, or determining financial aid decisions concerning eligibility, amount, condition, and enforcement of terms of said aid.
    g. organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, and administer predictive tests, to administer student aid programs or to improve instruction. Those organizations may not disclose personally identifiable information on students, and information secured must be destroyed when no longer needed for their projects. Institutions are advised to obtain such assurance in writing.
    h. accrediting organizations carrying out their accrediting functions.
    i. parents of a student who have established that student's status as a dependent according to Internal Revenue Code of 1954, Section 152 (see appendix 7 and chapter 5.4).
    j. persons in compliance with a judicial order or a lawfully issued subpoena, provided that the institution

makes a reasonable attempt to notify the student in advance of compliance (see chapter 6.26.7 and appendix 15). NOTE: The institution is not required to notify the student if a federal grand jury subpoena, or any other subpoena issued for a law enforcement purpose, orders the institution not to disclose the existence or contents of the subpoena.

   k. persons in an emergency, if the knowledge of information, in fact, is necessary to protect the health or safety of students or other persons. (According to 34 CFR 99.36, the wording of this section "shall be strictly construed.")
   l. an alleged victim of any crime of violence (as that term is defined in 18 U.S.C. 16) of the results of any institutional disciplinary proceeding against the alleged perpetrator of that crime with respect to that crime.

4. Institutions may release without written consent those items specified as public or Directory Information for students who are currently enrolled, provided the following conditions are met prior to disclosure:
   a. that the institution inform the students of information or categories designated as public or Directory Information,
   b. that students be given the opportunity to refuse disclosures of information for any or all categories of directory information, and
   c. that the students be given a reasonable period of time in which to state such refusals in writing.
5. Institutions may release without written consent those items designated as public or directory information on any student not currently enrolled unless that student, at his/her last opportunity as a student, requested otherwise.
6. Institutions may also disclose personally identifiable information from a student's education records to a third party if the eligible student has signed and dated a written consent form which is presented to a school official by the third party.
7. Institutions are responsible for informing parties to whom personally identifiable information is released that recipients, as a general rule, are not permitted to disclose the information to others without the written consent of the students. An example of such wording follows.

   > "The attached information has been forwarded to you at the request of the student with the understanding that it will not be released to other parties. The Family Educational Rights and Privacy Act of 1974, as Amended, prohibits release of this information without the student's written consent. Please return this material to us if you are unable to comply with this condition of release."

   In certain circumstances, found in Sec 99.33 (34 CFR 99.33) of the regulations, the recipient of the information may legally redisclose that information.
8. Terms under which institutions may disclose information to parents of students are:
   a. by obtaining the student's written consent which institutions must do if the student is independent, or
   b. by establishing the student's dependency as defined by Internal Revenue Code of 1954, Section 152 (see appendix 7). An explicit institutional policy, covering "dependency" determination, should be available if release is to be made to parents under this provision (see chapter 5.4). That policy, for example, might include:
      i. advising each student during the institution's registration process that their records may be disclosed to their parents upon request unless the parents do not claim that student as a dependent for income tax purposes. Students should be asked to indicate if they are claimed as a dependent by their parents, or by one of their parents in cases of divorce, and to sign an acknowledgment that they were provided the opportunity to notify the school that they are not dependents for income tax purposes. Thereafter, if a parent of a student, who has indicated that one or both of the parents claims the student as a dependent, requests access, the school may give access to either parent (custodial or noncustodial) unless there is a court order, state statute, or other legally binding document prohibiting such.
      ii. requiring a certified copy of the parents' most recent Federal Income Tax Form.

4.2 CHALLENGE OF THE CONTENTS OF EDUCATION RECORDS

The Act and regulations do not provide details about required grievance and hearing mechanisms to be employed, but institutions should have clear channels of appeal which a) are stated in the written institutional policy, b) involve disinterested institutional personnel and c) take the following provisions of the regulations into account:

1. Institutions must provide students with an opportunity to challenge and amend the contents of their education records which the students consider to be inaccurate, misleading, or otherwise in violation of their privacy or other rights (see 34 CFR 99.20, 99.21, 99.22 for additional information).
2. Officials who receive challenge requests must decide within a reasonable period of time whether corrective action consistent with the student's request will be taken. The student must be notified of the decision. If the decision is in agreement with the student's request, the appropriate record(s) must be amended.
3. A student who is not provided full relief sought by his/her challenge must be informed by the appropriate official of the decision and his/her right to a formal hearing on the matter.
4. A student's request for a formal hearing should be in writing (see appendix 9). Within a reasonable period of time after receiving the requests, the appropriate official

must inform students of the date, place, and time of the hearing reasonably in advance of the hearing.

5. The student must be afforded a full and fair opportunity to present evidence relevant to the issue raised. The student may be assisted or represented at the hearing by one or more persons of his/her choice, including an attorney, at the student's expense.
6. The hearing may be conducted by any individual, including an official of the institution, provided such person does not have a direct interest in the outcome of the hearing.
7. Decisions of the colleges and universities must be in writing, must be based solely on the evidence presented at the hearing(s), and must include a summary of the evidence and the reasons for the decision. The decision should be delivered to all parties concerned who have a legitimate educational interest.
   a. The institution will correct or amend the education record in accordance with the decision of the hearing if the decision is in favor of the student and inform the student of the amendment in writing.
   b. Should the educational agency or institution decide not to amend the record in accordance with the student's request, the appropriate official must inform the student that:
      i. the student has the opportunity to place with the education record a statement commenting on the information in the record, or a statement setting forth any reason for disagreeing with the decision of the hearing.
      ii. the statement placed in the education record by the student will be maintained as part of the record for as long as the record is held by the institution.
      iii. this record, when disclosed to an authorized party, must include the statement filed by the student.

FERPA was not intended to provide a process to be used to question the substantive judgments which are correctly recorded. The rights of challenge are not intended to allow students to contest, for example, a grade in a course because they felt a higher grade should have been assigned.

4.3 RECORDS OF REQUESTS AND DISCLOSURES

All institutions subject to the provisions of the Act are required to maintain records of requests for and disclosures of personally identifiable information. The records of requests, whether granted or not, shall include the names and addresses of the person(s) who requested the information and their legitimate interests in the information. Records of requests and disclosures do not have to be maintained for:

1. those requests made by students for their own use,
2. those disclosures made with the written consent of students,
3. those disclosures made to school officials under the conditions that allowed such disclosures, or
4. those disclosures made to a party seeking directory information.

The records of disclosures and requests for disclosures are considered a part of the students' education records; therefore, they must be retained as long as the education records to which they refer are retained by the institutions.

The records of requests and disclosures must include:

1. the parties who have requested or obtained personally identifiable information from the education records of a student, and
2. the legitimate interests these parties had in requesting or obtaining the information.

These records must be made available for inspection to students, responsible institutional officials, state and federal auditors, and others, as prescribed by law.

4.4 INSTITUTIONAL RECORDS AND RECORDKEEPING

Reference is made throughout these guidelines to various documents in addition to the written institutional policy statement. Among them are forms documenting waiver of rights and consent for disclosure, subpoenas, requests for and notices of hearings, and summary proceedings of the hearings. Neither the Act nor the regulations for its implementation stipulate procedures for retention of such written documents. Most questions about the accuracy of education records have been and will continue to be settled informally. Nevertheless, it is clear in both the Act and the regulations that, if a complaint regarding violations of the Act should be filed against an institution, the institution's defense will depend largely upon documentation of its procedures and practices in any individual case. Therefore, these guidelines advise institutions to take necessary precautions to retain all documentation pertaining to compliance with the Act. The way in which these records are kept is at the discretion of the institution.

The reader of these guidelines should also note that in several places it is implied that institutions may choose to inform students about certain aspects of the Act either orally or in writing. The foregoing paragraph should be kept in mind when exercising this discretion.

Finally, the reader's attention is directed specifically to the definition of "education record" in chapter 2 of these guidelines where the records which are not subject to the provision of the Act are specified. It is apparent that there will be instances where institutional files will contain records which are covered by the Act as well as those which would not be if they were separate. For example, notes that a school official makes for his/her own use are not "education records" if they are only revealed or made accessible to a temporary substitute. However, if a school official places his/her notes in a file to which other school officials, or the student, has access, the notes could be considered "made accessible to" other persons and therefore would not be exempt from FERPA requirements.

Issues

CHAPTER FIVE

Since the passage of the Act, a number of issues have arisen from changes in technology, interpretations of the Act by the Family Policy Compliance Office, institutional practices, and an increasing interest in, and pressure from, a societal "need to know." This section will cover some of these issues. The discussion of these issues is based on the most recent information available and should not be considered legal interpretation or legal guidance.

5.1 ELECTRONIC TRANSMISSION OF EDUCATION RECORDS (SPEEDE)

Today's technology permits institutions to transmit student education records to other educational institutions and agencies electronically by diskette, magnetic tape, direct connection, or electronic network. The use of electronic data interchange (EDI) is growing in use at the elementary, secondary and postsecondary levels. EDI employs standard data formats for carrying data from one computer to another. The printing of a student record and rekeying of the student data into another computer are no longer necessary when the sender and receiver both utilize EDI.

A standing committee of AACRAO, SPEEDE (Standardization of Postsecondary Education Electronic Data Exchange) has joined with the ExPRESS (Exchange of Permanent Records Electronically for Students and Schools) Technical Advisory Group to develop EDI standards related to student records. Four standards have been approved as Draft Standards for Trial Use by the American National Standards Institute Accredited Standards Committee X12. These are:

- Transaction Set 130 Student Educational Record (Transcript)
- Transaction Set 131 Student Educational Record (Transcript) Acknowledgment
- Transaction Set 146 Request for Student Educational Record (Transcript)
- Transaction Set 147 Response to Request for Student Educational Record (Transcript)

FERPA requires institutions to prevent the unauthorized release of personally identifiable, nondirectory information from student education records without the written permission of the student. When transmitting a student record electronically, an institution must require the same written authorization from the student as it does for a paper transcript unless the transmission is to an institution in which the student is seeking to enroll and the sending institution's FERPA policy permits that institution to send education records without receiving the student's written permission (see chapter 4.1.e).

With EDI transmission, according to the SPEEDE committee, security and confidentiality of the student's education record are greatly enhanced over the traditional methods of transmitting a student's record. The confidentiality of the record and its authentication are certified by the sender's and receiver's adherence to the following measures:

- All participants agree to send transcripts/credential information to the published address appearing in the AACRAO-approved Participant Table or to the address of a receiver with whom there is a formal trading partner relationship.

- All participants in the electronic data exchange agree to acknowledge to the AACRAO-approved address of the sending institution all receipts of transcript/credential information. Using Transaction Set 131 as an acknowledgment of receipt of Transaction Set 130 serves to inform the institution sending the student record of checkpoint items on the transcript, such as the number of courses included, highest degree, and final GPA.

- All participants should devise a system of comparing acknowledgments received against credentials transmitted in order to be alerted to any misuse or failure of the system. If the checkpoint items on Transaction Set 131 do not match what was sent in Transaction Set 130, a second transmission can override the first.

- All participants in the exchange make a commitment to educate their own staff on the need for careful handling of all access information in order to protect all users of these systems. Registrars should maintain a level of awareness concerning the potential for security violations and take appropriate steps to prevent security violations, whether in their paper or electronic systems (Rothenberger, "Transmission Security and Acknowledgment." Paper presented at the AACRAO

SPEEDE/ExPRESS Workshop, Madison, Wisconsin, October 20-22, 1991).

5.2 FACSIMILE RECORDS (FAX)

The use of fax technology involves two issues. The first issue revolves around the use of fax machines to receive student requests (the student's consent) to release information from his/her education records to third parties. FERPA requires that the student's written permission, under most circumstances, be obtained before releasing a nondirectory education record (for example, a transcript) to a third party. The receipt of a written request to release an education record via fax satisfies this requirement of FERPA. According to the 1991 Survey of AACRAO Member Institutions on FERPA Policies and Practices, 62.5% of the respondents honored fax requests to send official transcripts to third parties.

The Family Policy Compliance Office recommends that institutions have "sufficient information ... to convince the responsible official at the institution that the signed document is a bona fide copy of an original consent ... ." (Rooker, Family Educational Rights and Privacy Act (FERPA). Paper presented at the Annual Meeting of the American Association of Collegiate Registrars and Admissions Officers, Chicago, Illinois, April 18, 1989.) Furthermore, as of this writing the Family Policy Compliance Office takes the position that FERPA requires "... an institution have a student's written consent before it discloses or releases (nondirectory) information pursuant to the student's telephone request." (Letter from LeRoy Rooker, Director, Family Policy Compliance Office, to Richard Rainsberger, Registrar, Carnegie Mellon University, October 4, 1993.)

The second issue involves the actual sending and receiving of student transcripts or other education records via fax. According to the AACRAO SPEEDE Committee, the transmission of records via fax is less secure than the transmission of electronic records via SPEEDE/EDI.

Institutions must make their own decisions, following their own procedures, on whether to send and accept faxed records. According to the 1991 Survey of AACRAO Member Institutions on FERPA Policies and Practices, most institutions which accept fax transcripts will accept them for advising purposes, but require that the student subsequently provide an official copy.

5.3 LEGITIMATE EDUCATIONAL INTEREST

One of the main emphases of FERPA is that personally identifiable information in an education record may not be released without prior written consent from the student. The Act, however, does provide several exceptions to this consent requirement which allow institutions, according to their written FERPA policy, to disclose personally identifiable information from a student's education record without prior written consent.

It is important to note that through these exceptions FERPA does not require an institution to disclose education record information to any party. FERPA does set forth conditions under which an institution may disclose such information without a student's written consent.

One of the primary exceptions is that an institution may disclose personally identifiable information without the student's written consent to school officials whom the institution has determined have a legitimate educational interest. The regulations implementing FERPA, however, do not establish criteria for determining the limits of what may be considered a legitimate educational interest.

There are several important factors to consider if an institution is to exercise prudence in releasing education record information under the aegis of legitimate educational interest:

- Although FERPA makes it clear that an institution may release personally identifiable information to school officials, an institution must state the institution's intention to utilize this practice in its written institutional policy on FERPA.
- The criteria for determining who is a "school official" must be specified in the written institutional policy.
- Criteria must be formulated for determining legitimate educational interest.

5.3.1 "School Officials"

In most cases, an institution's policy will include a faculty member in its definition of a school official. A faculty member performing a task or function specified in the institution's policy as constituting legitimate educational interest could then receive access to a student's education record. Certain individuals who are not employees of the institution but who provide a service under retainer or purchase agreements also may be covered as school officials in the institution's FERPA policy. Such individuals may include an outside attorney providing legal services to the institution or an insurance representative.

An institution's policy also may include student workers within the category of "school officials." A student worker performing a task or function covered under the institution's definition of legitimate educational interest may then be given access to other students' education records. It is advisable to 1) familiarize student workers with FERPA guidelines and policies, 2) explain the importance of preserving the confidentiality of education records they encounter in their tasks, and 3) require student workers to sign an agreement, similar to that shown in appendix 10, prior to their employment to emphasize the importance of education record confidentiality and minimize the chance that FERPA will be violated by the unauthorized release of nondirectory information.

It would be impractical to list, in specific terms, who might be considered a "school official." It is recommended that an institution's criteria be broad enough to include anyone who may reasonably fall within that category. Sample criteria for determining a "school official" might be:

- a person employed by the institution in an administrative, supervisory, academic or research, or support staff position;
- a person serving on an institutional governing body; or
- a person employed by or under contract to the institution to perform a special task, such as an attorney or an auditor.

Although a person has been designated as a "school official," he/she does not have inherent rights to any and all education record information. Additionally, the school official must demonstrate a legitimate educational interest as opposed to a personal or private interest and such a determination must be made on a case-by-case basis.

5.3.2 Articulating Legitimate Educational Interest

A sample policy outlining what constitutes legitimate educational interest might include:

> "A school official is determined to have legitimate educational interest if the information requested is necessary for that official to a) perform appropriate tasks that are specified in his/her position description or by a contract agreement; b) perform a task related to a student's education; c) perform a task related to the discipline of a student; d) provide a service or benefit relating to the student or student's family, such as health care, counseling, job placement or financial aid."

An institution should also make clear in its institutional FERPA policy that disclosure to a school official having a legitimate educational interest does not constitute authorization to share that information with a third party without the student's written permission. Such information, when it has fulfilled its originally specified purpose, should be destroyed or returned to the originating office for appropriate disposition.

The custodian of the education record requested must decide the legitimacy of each request for information. If there is any doubt or question regarding the request, the custodian should withhold disclosure without either written consent of the student, concurrence of appropriate institutional officials, or approval of the immediate supervisor. Employees in offices containing education records must be instructed to determine legitimate educational interest first before an education record is released in all cases. This also means that all school officials must be aware of the requirements of determining legitimate educational interest and be prepared to demonstrate their need to know upon request. This will eliminate needless confrontation and provide a better working environment for all concerned.

If asked to investigate a controversial disclosure to a faculty member regarding a letter of recommendation, the Family Policy Compliance Office would consider the following questions to determine whether FERPA had been violated:

- Has the institution established a criterion in its FERPA policy that appears to address disclosures for the purpose at issue?
- What does the faculty contract, job description or other similar document specify regarding the duties and responsibilities of faculty?
- Does or did the faculty member teach the student in any course?
- What is the practice regarding recommendations at the institution?
- Does the faculty member otherwise have personal knowledge of the student's abilities?
- Was the faculty member asked by the student to provide the recommendation?
- Is there any state law on this issue?

Representative institutional policy statements on legitimate educational interest are found in appendix 11.

5.3.3 Computer Access and Legitimate Educational Interest

The ability of computer systems to provide education record information to an increasing number of institutional personnel creates a risk that such data may be disclosed to individuals who have no legitimate educational interest. Therefore the development of guidelines and policies for restricting access and the establishment of appropriate security processes so as to insure proper use of education record data are institutional responsibilities.

The institution should establish procedures for initially instructing and periodically reminding school officials of FERPA's confidentiality requirements before it gives them access to the computer system (see appendix 12). These school officials should also be informed of the institution's criteria for determining legitimate educational interest and their responsibility for assuring that access is not abused.

5.4 PARENTAL ACCESS TO CHILDREN'S EDUCATION RECORDS

At the postsecondary level, parents have no inherent rights to inspect a student's education records. The right to inspect is limited solely to the student.

Records may be released to parents only under the following circumstances: 1) through the written consent of the student, 2) in compliance with a subpoena, and 3) by submission of evidence that the parents declare the student as a dependent on their most recent Federal Income Tax form (see appendix 7, Internal Revenue Code of 1954, Section 152). An institution is not required to disclose information from the student's education records to the parents of a dependent student. It may, however, exercise its discretion to do so. It is strongly recommended that a statement of the institution's policy regarding parental access and disclosure be clearly stated in its FERPA policy.

5.4.1 Biological, Custodial, and NonCustodial Parents

In cases of divorce, separation or custody, when only one parent declares the student as dependent, an institution may grant equal access to information from the student's education records. However, when access is given to one parent, the institution must grant equal access to the other parent upon request, unless there is a court order, state statute, or legally binding document stating otherwise.

When access is granted based upon demonstration of dependency, the file should note that the determination to authorize access was based upon the appropriate documentation. However, as long as such notation is made, copies of the financial documents should not be retained. Since the student has no right of access to parental financial information, placing such copies in a student's file would violate parental rights of confidentiality.

5.5 STANDARDS FOR DEFINING DIRECTORY INFORMATION

Directory information, or education record information that can be disclosed without the student's written permission, as defined in Section 99.3 of the original FERPA regulations, includes:

> "the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent educational ... institution attended by the student, and other similar information." For example, the Family Policy Compliance Office states that an institution could include a student's photograph and class schedule as directory information. However, personal identifiers, such as student identification numbers or social security numbers, cannot be designated as directory information. Within these guidelines, each institution may be as inclusive or restrictive as it wishes.

The 1988 Final Regulations amended this definition by adding that directory information was that "... information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed" (34 CFR 99.3; *Federal Register*, 4/11/88, p. 11944). It, therefore, attempted to establish a clarifying standard for assisting institutions in determining what should be included as directory information.

What have colleges and universities identified as directory information since FERPA was enacted in 1974? Two surveys have attempted to answer that question. In a 1988 survey of 56 registrars of the American Association of Universities (AAU), Samuel Lewis, Registrar of the University of Minnesota, found that all of the 46 institutions responding identified name, address, telephone, dates of attendance, and degrees received as directory information. A 1991 AACRAO survey of 257 respondents from a randomly selected group of 500 colleges and universities revealed that more than eight out of every 10 institutions identified name, dates of attendance, degree(s) received, major, address, and telephone as the most common items of directory information. The results of both surveys can be found in appendix 8.

5.6 LAW ENFORCEMENT RECORDS/ MEDICAL TREATMENT RECORDS

Law enforcement agencies and health offices requiring access to student records are bound by all of the conditions of accessibility stipulated by FERPA. Congressional legislation passed in 1992 exempts from FERPA's definition of education records those "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." Thus, law enforcement unit records are not covered by FERPA and could be released without written permission of the students involved. Certain medical treatment records have always been exempt from the definition of education records under certain conditions specified in the Act and the regulations.

Institutional law enforcement and medical treatment records should always be kept separate from education records. Such separation of records not only further protects the privacy of the student's education records but facilitates timely and appropriate access to personal and sensitive information by authorized school officials.

Education record information may be released without a student's written consent in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. A record of each disclosure must be made and maintained (see chapter 4.3).

5.7 STATE DATABASES

The technological advances that have led to SPEEDE and other forms of electronic transfer of records have also led to the development of statewide databases for a variety of purposes. In many states, state laws and regulations require public educational institutions to provide personally identifiable student data to the appropriate state agency. These agencies are usually charged with state research and reporting responsibilities.

The Act (Section 99.31 (a)(3) of the regulations) permits institutions to provide personally identifiable information from education records to state agencies without consent under certain conditions specified in Section 99.35. In general, institutions can provide this data in connection with audits or evaluations of federal or state-supported education programs. The Act (see Section 99.31(a)(6)) also allows disclosure to organizations, including state agencies, "for conducting studies for, or on behalf of, educational agencies or institutions to develop, validate or administer predictive tests, administer student aid programs, or improve instruction." (Rooker. Family Educational Rights and Privacy Act (FERPA). Paper presented at the Annual Meeting of the American Association of Collegiate Registrars and Admissions Officers, Honolulu, Hawaii, April 15, 1991.) Paragraph (ii) of Section 99.31(a)(6) sets forth the conditions that apply to these disclosures.

Institutions that provide personally identifiable student data to state agencies, whether in electronic format or in hard copy format, should have procedures in place which will, to the best of their ability, protect this student information. State agencies should be advised of the FERPA requirements, especially Section 99.35, which require the destruction of this information once it is no longer needed for its original purpose. In addition, institutions should include in their policies and procedures a general notice to students about this disclosure of information to state agencies and the purpose of the disclosure.

Institutions must record the disclosures in accordance with Section 99.32 of the regulations. Finally, the SPEEDE Task Force recommendations on security enhancement have applicability to this type of electronic transfer of data. Registrars and other institutional officials with responsibility for the protection of student FERPA rights should take all precautions necessary to ensure security is maintained as the records are transferred from the institution to the state educational agency (see chapter 6.15 for a discussion on a related topic, Postsecondary Feedback to High Schools).

5.8 USE OF THE SOCIAL SECURITY NUMBER AS A STUDENT IDENTIFIER —THE FEDERAL GOVERNMENT'S POSITION

References in congressional legislation to the social security number (SSN) as a personal identifier are limited. The Privacy Act of 1974 states that:

> "It shall be unlawful for any Federal, State, or local government agency to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security account number ..." (Section 7 (a)(1), Privacy Act of 1974, PL 93-579; 5 U.S.C. 552a note).

and

> "Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it" (Section 7 (a)(2)(B), Privacy Act of 1974, PL 93-579; 5 U.S.C. 552a note).

Thus, from these statements the federal government recognizes that the social security number can be used for purposes other than an individual's transactions with the Social Security Administration.

In higher education, the use of the social security number was tested in a New Jersey federal district court case, Krebbs v. Rutgers (797 F. Supp. 1246; 1992). In this case, the judge upheld the use of the social security number as a personal identifier for administrative purposes. However, the judge also stated in his decision that the unauthorized dissemination of social security numbers was prohibited.

Although the Privacy Act did not directly include public colleges and universities, it does have implications for all institutions of higher education. While many colleges and universities do use the student's SSN as an ID number (and Congress is now requiring its use by any student who applies for any type of financial aid supported by the federal government), these institutions must also take steps to protect the privacy of that number as required by FERPA.

Thus, colleges and universities should consider providing an alternate personal identifier at the student's request. This could be in the form of an institutionally assigned ID number. As part of the agreement to change a student's ID number, the student could be required to sign a statement of irrevocability and whatever other requirements the institution feels is appropriate, e.g., use of this ID number in any transaction with the institution (as with the offices of the cashier, dining, etc.; see appendix 13 for a sample agreement).

5.9 CONFLICT WITH STATE LAW

Often state and local Open Record laws appear to be in conflict with FERPA. However, in most instances, they do not apply to the education records of an institution. When they are applicable, they usually cover only public institutions.

Should a state or local law appear to conflict with FERPA, section 99.61 of the Final Regulations mandates that institutions that cannot comply with the Act or regulations due to a conflict with State or local law must notify the Family Policy Compliance Office within 45 days, giving the text and citation of the conflicting law (34 CFR 99.61). Notifications should be sent to the Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202-9001; (202) 260-3887, FAX: (202) 260-9001.

What About . . . ?

CHAPTER SIX

This chapter provides primarily short answers to the most frequently asked questions about FERPA. Practicing professionals have prepared the responses using FERPA as a guide.

6.1 ACADEMIC STANDING

A student's current academic standing—such as "in good standing" or "eligible to return"—should not be designated as directory information under FERPA. By process of elimination, those who are "not in good standing" could be identified and this would be considered an invasion of privacy under FERPA.

6.2 FERPA RIGHTS ACCORDED ADMITTED VS. ENROLLED STUDENTS

Persons who applied for admission but were not accepted have no rights under FERPA. Admitted students are covered by FERPA only within the component unit to which they are admitted once they have enrolled at the institution.

Individuals who are denied admission to a program of study or component unit are not entitled by FERPA to have access to materials relating to the denied application, even if the individual is subsequently admitted into and enrolled in another course of study as an auditor.

6.3 ANECDOTAL NOTES ON A STUDENT

All anecdotal notes made about a student that an institution maintains and shares with school officials, regardless of the medium, would be included in the definition of education records and, therefore, subject to FERPA. Unless the notes are kept in the sole possession of the maker and are accessible only to a temporary substitute, they are part of the education record, subject to review by the student. This would include all shared paper files as well as notes made about the student on a shared computer record. If a student has requested access to his/her education record, none of these notes may be destroyed prior to student review.

Student admissions files for any admitted students should be reviewed in order to remove any items which have fulfilled their admissions-related purpose and will no longer be required in the student's academic career. Although an institution can decide what records to keep and what to destroy, it is strongly recommended that each institution establish a regular process to accomplish this task. One category of items which should be considered for removal, especially at selective institutions, are notes written by admissions counselors during the admissions process and any voting records found in a student's files on which a decision of admission has been based. This information, if not removed from a student's files at this time, becomes part of the student's education records and can be reviewed by the student if he/she has not waived the right to do so.

6.4 ANNUAL NOTICE TO STUDENT

Although an institution is required by FERPA to notify the student annually about the student's rights under FERPA, a letter or specific form is not required. The notice must inform students of their specific rights as noted in Section 99.7 (34 CFR 99.7) of the 1988 regulations (see appendix 2). This notice can be included in the registration instructions, student handbook, student newspaper, or other medium which is available to all students. (See appendix 9 for a sample of an annual notification statement.)

6.5 CAMPUS SECURITY/POLICE

Although law enforcement unit records are not considered education records, they must be kept separate from students' education records. If a copy of a law enforcement unit record is given to a school official and that copy is placed in a student's folder or in another location within the institution outside the law enforcement office, that copy becomes an education record subject to FERPA.

6.6 COMPUTER ACCESS TO RECORDS

Initially, it is advisable to provide training to potential users regarding FERPA before access to education record information via computer terminal is given. After training, users should be required to sign a form indicating they have been made aware of the issues relating to student privacy and the subsequent implications of a violation on their part. Only then should system access codes be assigned or renewed. Sample forms are found in appendix 12. Subsequently, whenever one logs in to the system, a statement of alert cautioning users regarding student privacy rights should be displayed.

Data release via tape or other means is prohibited unless use is authorized in accordance with law, i.e., student release or legitimate educational interest, court order, etc.

6.7 CRISIS SITUATIONS/EMERGENCIES

If nondirectory information is needed to resolve a crisis or emergency situation, an educational institution may release that information if the institution determines that the information is "necessary to protect the health or safety of the student or other individuals" (34 CFR 99.36). A record must be made of the disclosure.

Factors to be considered or questions to be asked in making a decision to release such information in these situations are 1) the severity of the threat to the health or safety of those involved; 2) the need for the information; 3) the time required to deal with the emergency; and 4) the ability of the parties to whom the information is to be given to deal with the emergency.

6.8 DECEASED STUDENTS

Under common law regarding privacy rights, the privacy interests of an individual expire with that individual's death. Accordingly, the disposition of records held by an institution pertaining to a deceased individual is not a FERPA issue but a matter of institutional policy. Since FERPA would no longer apply, the institution may exercise its own discretion in deciding whether, and under what conditions, information should be disclosed to survivors or other third parties. Further, it is recommended that each institution develop a policy on releasing information on deceased students. Such policy might include a period of time during which only the executor/executrix of the estate or parents could authorize the release of education record information on the deceased student. Beyond such time, institutional policy might permit access to anyone without permission.

6.9 DESTRUCTION OF REQUESTS FOR ACCESS, RECORDS OF DISCLOSURE, AND EDUCATION RECORDS

An institution may not destroy any education records if there is an outstanding request to inspect and review the records. Furthermore, the institution shall maintain a record of each request for access and disclosure of personally identifiable information from education records as long as the records are maintained by the institution. It is, therefore, strongly recommended that each institution establish a records retention schedule/program following the AACRAO guidelines found in *Retention of Records* (American Association of Collegiate Registrars and Admissions Officers, 1987).

6.10 IRS SUMMONS

For purposes of FERPA, an IRS summons should be treated as a "lawfully issued subpoena." Information from a student's education records can be disclosed without the student's written consent to comply with the summons. As with all subpoenas, a reasonable attempt to notify the student is required prior to releasing the information (see chapter 6.26.7 and appendix 15).

6.11 LETTERS OF RECOMMENDATION

Statements made by a recommender which are made from the recommender's personal observation or knowledge do not require a written release from the student who is the subject of the recommendation. However, if personally identifiable information obtained from a student's education record is included in a letter of recommendation (grades, GPA, etc.), the writer is required to obtain a signed release from the student which 1) specifies the records that may be disclosed, 2) states the purpose of the disclosure, and 3) identifies the party or class of parties to whom the disclosure can be made.

6.12 THE MEDIA

Nothing in FERPA allows an institution to discuss a student's education records publicly—even if a lawsuit has made the information a matter of public record. A school official may not assume that a student's public discussion of a matter constitutes an implied consent for the school official to disclose anything other than directory information in reply. The school official who wishes to respond to the media under these circumstances should ask the student for a properly executed consent form.

6.13 PARENT ADDRESS

While local and permanent addresses could be considered directory information under FERPA (unless an exclusion has been filed by the student), a separate parent address should not be considered directory information and should not be disclosed without prior written consent from the student. While it is true that permanent and parent addresses are often the same, in many cases these two addresses are not. Institutions should be careful not to include what is considered a "parent" address as directory information.

6.14 PENALTIES FOR VIOLATING FERPA REGULATIONS

The Family Policy Compliance Office reviews and investigates complaints of violations of FERPA. If the Office finds that there has been a failure to comply with FERPA, it will notify the institution about the corrections that need to be made to bring the institution into compliance. The Office will establish a reasonable period of time for the institution to voluntarily accomplish the specified changes.

If the Secretary of Education finds, after this reasonable period of time, that an institution has failed to comply with FERPA and determines that compliance cannot be secured by any means, the Secretary can, among other options, direct that no federal funds under his/her administrative control (financial aid, educational grants, etc.) be made available to that institution.

Although federal funding has never been withheld from any institution under these regulations, civil cases have been brought for alleged violations of FERPA.

6.15 POSTSECONDARY FEEDBACK TO HIGH SCHOOLS

Under normal circumstances, personally identifiable, nondirectory information from education records may not be released to a student's high school without the written consent of the student. Aggregate data that does not personally identify the students may be submitted without a release. While some institutions include a statement of consent in their admissions application which will permit the institution to provide personally identifiable information to high schools, this practice could be challenged if it is seen as coercive or as a requirement for admission to the institution. The institutional statement of consent must specify the records/information to be disclosed and the purpose of the disclosure.

There may be conditions under which personally identifiable information can be released for postsecondary feedback purposes without students' written permission. Florida, for example, passed the Postsecondary Feedback Act in 1991. This Act requires postsecondary institutions in Florida to supply certain personally identifiable information from students' education records to the Florida Commissioner of Education. The Commissioner is then required to organize the student records by school district and public high school in which the students were enrolled and report the information to each school district.

The rules of the Florida Board of Education implementing this provision require each postsecondary institution to "report to the school district on the performance of the school district's public high school graduates who are enrolled at the (institution)." The following information must be reported for each student: name of school and county number; student name, social security number, and specified demographic information, date of birth; reporting institution; term of first enrollment; reading, writing, or mathematics courses; test scores below a specified level; enrollment in certain remedial courses; credits attempted and earned toward graduation; grade point average; and courses taken.

In response to a 1992 question to determine if the Florida Postsecondary Feedback Act was in conflict with FERPA, the Family Policy Compliance Office stated that postsecondary institutions in Florida could release personally identifiable information from student education records without violating FERPA. The office stated:

"FERPA generally provides that an educational institution must obtain a student's written consent before disclosing personally identifiable information from the student's education records (20 U.S.C. 1232g (b); 34 CFR 99.4 and 99.30). FERPA does provide that an educational institution may disclose education records or personally identifiable information from such records without prior written consent under certain limited exceptions (20 U.S.C. 1232g(b); 34 CFR 99.31). Under one of the exceptions an educational institution may disclose information without consent when the disclosure is to authorized representatives of State and local education authorities in connection with an audit or evaluation of Federal or State supported education programs ..." (34 CFR 99.31(a)(3) and 99.35).

Nonconsensual disclosure is also permissible when the disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to improve instruction (34 CFR 99.31(a)(6)). Both the recipients (Commissioner of Education and school districts) and the nature of the information required to be disclosed under this State statute indicate that the purposes of the disclosure include evaluation of State-supported education programs and improvement of instruction. Accordingly, we believe that disclosure without prior written consent is permissible under both sections 99.31(a)(3) and 99.31(a)(6).

FERPA establishes a recordkeeping requirement that an educational agency or institution must meet in making nonconsensual disclosures from education records. Those conditions are set forth in 34 CFR 99.32. Briefly, 34 CFR 99.32 states in paragraph (a) that an educational ... institution (1) shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student and (2) shall maintain the record with the education records of the student as long as the records are maintained. Paragraph (a) further states that the record of disclosure must include (1) the parties who have requested or received personally identifiable [information] from the education records, and (2) the legitimate interests the parties had in requesting or obtaining the information. Additional requirements apply when records are disclosed without consent under (section) 99.31(a)(3) as delineated in (section) 99.35 and when records are disclosed under (section) 99.31(a)(6) as delineated under that exception." (Letter from LeRoy Rooker, Director, Family Policy Compliance Office to Joseph Roof, Dean of Admissions and Records Systems, Seminole Community College, December 3, 1993.)

6.16 POSTING OF GRADES BY FACULTY

The public posting of grades either by the student's name, institutional student identification number, or social security number without the student's written permission is a violation of FERPA. Even with names obscured, numeric student identifier numbers are considered personally identifiable information. Therefore, the practice of posting grades by social security number or student identification number violates FERPA.

Instructors and others who post grades should use a system that ensures FERPA requirements are met. This can be accomplished either by obtaining the student's uncoerced written permission to do so or by using code words or randomly assigned numbers that only the instructor and individual student know. The order of posting should not be alphabetic.

Another method used to notify students of their final or other grades by faculty prior to official institutional notification is to have any interested students complete a postcard with their name and mailing address on the address side and the course name/number on the message side. The completed postcard is given to the instructor who writes the student's grade on the message side and mails it to the student when grades have been determined.

6.17 RECORDKEEPING OF DISCLOSURES

According to FERPA, an institution must maintain a record of each request, with the exceptions listed below, for access to, and each disclosure of, personally identifiable information from education records.

The record of each request for access and each disclosure must contain the name of the parties who have requested or received information and the legitimate interest the parties had in requesting or obtaining the information.

A record does not have to be kept if the request was made by or disclosure was made to 1) the eligible student, 2) a school official who has been determined to have a legitimate educational interest, 3) a party with written consent from the eligible student, or 4) a party seeking directory information only.

Thus, requests for or disclosures of education record information without the student's written consent, which an institution would be required to record, would include but not be limited to 1) disclosure to the parent (either custodial or noncustodial) of an eligible student, 2) disclosure in response to a lawfully issued court order or subpoena, 3) disclosure for external research purposes where individual students have been identified, or 4) disclosure in response to an emergency.

These records must be maintained with the education records of the student as long as the records are maintained by the institution.

6.18 RELEASING NONDIRECTORY INFORMATION OVER THE PHONE

FERPA does not preclude an institution from disclosing nondirectory information from a student's education record to that student by telephone. Institutions are charged with implementing whatever procedures they deem necessary to verify the individual's identity. It is suggested that questions such as student identification number, date of birth, place of birth, parent name and address, high school, major program, class level, recent courses taken, etc. be asked by the school official. These questions should be correctly answered by the student calling before personally identifiable information is provided via the telephone.

FERPA prohibits the release of nondirectory information over the phone to a third party in most instances. Nondirectory information can be released to a third party if the information is needed to help resolve an emergency or the student has given specific written permission to do so.

6.19 SCHOLARSHIP COMMITTEES

Often student scholarships are awarded on the basis of the student's education record. If such review is made only by school officials who have been determined to have a "legitimate educational interest," no student release is necessary. If, however, such a review includes a person or persons not identified as "school officials" in the institution's policy statement on FERPA, a signed written consent from the student must be obtained before any review of his/her education record may take place. Alternately, the third party can be designated as a "school official" in the institution's FERPA policy statement for the specific purposes for which the scholarship committee is responsible.

6.20 STUDENT COMPUTER ACCESS TO HIS/HER OWN EDUCATION RECORDS

An institution may allow a student access to the student's education records by computer, provided the institution has established procedures to ensure the student will obtain access only to his/her own records. The development of guidelines for restricting access and insuring proper security of data in computer systems is an institutional responsibility. It is suggested that the institution use at least a student identification number and a PIN (Personal Identification Number) to grant computer access.

6.21 STUDENT DIRECTORIES

Release of directory information to any group for publications such as student directories, award ceremonies, yearbooks, etc. is subject to FERPA restrictions. Any group seeking to publish a student directory at an institution that chooses to release directory information must do so through a supervising school official or office. It must give students who wish to be excluded from the listing the opportunity to notify the group within an appropriate timeframe prior to publication.

6.22 STUDENT RIGHT TO KNOW/ CAMPUS SECURITY ACT AND FERPA

The Student Right to Know and Campus Security Act of 1990 requires institutions to publish graduation rates and statistics on campus crime. As long as the data are provided in aggregate form (and are not easily traceable and, therefore, not personally identifiable to any students), there is no violation of FERPA. Since the Student Right to Know and Campus Security Act requires only institutional aggregate data, no conflict with FERPA is anticipated.

6.23 THE STUDENT'S RIGHT TO REVIEW RECORDS

Students have the right to view their education records wherever these records are maintained on campus. Once a student has submitted a request to inspect his/her records, an institution must comply within a reasonable period of time but in no case longer than 45 days.

When the student has an outstanding financial or other hold on the records, the student still maintains the right to review his/her education records. He/she does not have the right to obtain any copies of those records unless a failure to do so would effectively deny the student the right to inspect and review the records.

In cases where a student is not within commuting distance of campus, and is therefore physically unable to be present to view the record on campus, the institution must make arrangements for the student to obtain access for review of these records. The institution may do so either a) by making copies of the requested records and sending them to the student by mail or other means; or b) by making arrangements with an appropriate third party, such as another institution or an attorney's office located in the vicinity of the student, to act as an agent. Such individual would agree to abide by the institution's instructions to allow the student to review but not copy the records. This method would be used particularly in instances where the student has an outstanding financial or other obligation to the college.

When providing a copy of a student record to authorized parties, a reasonable fee may be assessed. Regulations allow for the assessment of a fee unless its imposition "effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records ..." (34 CFR 99.11). Under normal circumstances, it is recommended that the fee assessed be based upon a reasonable determination of the cost of providing the copies, to include full administrative expenditures of materials, labor, and postage, and at the same time serve as a deterrent to possible frivolous requests. Colleges and universities may not charge a fee for searching for or retrieving the record since this is considered part of accepted and normal business.

It is recommended that the release of a third party document to a student be identified as unofficial copy.

6.24 STUDENTS' RIGHT OF NONDISCLOSURE OF EDUCATION RECORD INFORMATION

According to FERPA, a student can request, while still enrolled, that the college/university not release any directory information about that student. Colleges and universities must comply with this request.

With graduating students the decision to nondisclose is particularly important since this decision may have employment and other repercussions. Nondisclosure stipulations stay in effect until removed by the student. In such instances where a student is considering nondisclosure, it is recommended that the student be advised of the potential problems that may occur with inquiries from potential employers and other interested parties.

Additionally, FERPA allows students the right of nondisclosure of directory information only. Institutions may disclose information, even if the student requests otherwise, under the exceptions to FERPA's consent requirement (see chapter 4.1).

6.25 STUDENTS' RIGHTS AFTER CEASING ATTENDANCE OR GRADUATING

Students who have ceased attendance or have graduated from an institution of higher education have basically the same FERPA rights as students currently attending a college or university, including the right to 1) inspect their education records, 2) have a hearing to amend an education record, and 3) have their education record privacy protected by the institution. Former students do not have the right to request nondisclosure of their former institution(s) unless they asked, at their last opportunity as students, that no directory information be disclosed. Institutions, however, can grant the right of nondisclosure to former students if they wish.

Institutions do not have the option of placing a limit on the length of time this request for nondisclosure is in effect. If a student has requested nondisclosure of directory information in his/her last semester of attendance, that request must be honored until that student requests its removal. A time limit can be placed on any requests for nondisclosure as long as a student is currently attending and the time limit occurs when the student is still enrolled.

6.26 SUBPOENAS

A subpoena is a command from a court to require the person named in the subpoena to appear at a stated time and place to provide testimony or evidence.

There are two main types of subpoenas. The subpoena *duces tecum* requires the production of documents, papers, or other tangible things to the court. The subpoena *ad testificandum* requires a person to testify in a particular court case. A bench warrant issued by a judge, and also considered a court order, requires a person to produce something to, or testify before, a court.

6.26.1 What FERPA Says About Subpoenas

According to the 1988 FERPA Regulations, nondirectory, personally identifiable information from education records can be released, according to institution policy, "... to comply with a judicial order or lawfully issued subpoena ..." provided that the "... institution makes a reasonable effort to notify the ... student of the order or subpoena in advance of compliance." (34 CFR 99.31(a) (9)(i)(ii). *Federal Register*. Vol. 53, No. 69, April 11, 1988, p. 11947; appendix 2.)

Legislation passed on September 28, 1994 modified the requirement of notifying students of the receipt of a subpoena. This legislation orders institutions not to notify the student of the receipt of a federal grand jury subpoena, or any other subpoena issued for a law enforcement purpose, if specially ordered not to do so in the subpoena (see appendix 5).

6.26.2 How Subpoenas Are Created

The Federal Rules of Civil Procedure state that every subpoena shall:

- state the name of the court from which the subpoena is issued;
- state the title of the action, the name of the court in which the action is pending, and its civil action number; and
- command each person named in the subpoena to appear and either give testimony or produce documentary evidence at a time and place specified in the subpoena.

A blank court subpoena is issued by the clerk of the court. Normally, it is signed and sealed but is otherwise blank. The subpoena is then completed by an officer of the court, usually an attorney. The subpoena must be served by someone who is not a party to the civil or criminal action.

Any attorney can obtain these blank forms for a small fee. The attorney can complete these forms as needed. There is very little control over the distribution of these forms. Some courts do record the control numbers on the forms which have been sold or distributed and the name of the officer of the court who purchased them, but there is no universal requirement to do so. In most cases, the subpoena is not reviewed by the court before being presented. The signature on the subpoena is not normally an original. It is most likely a machine-printed facsimile made available for that use.

The attorney issuing the subpoena has the obligation of notifying the opposing attorney that a subpoena is being presented. Sometimes, however, this is not done.

6.26.3 Jurisdiction

The Federal Rules of Civil Procedure require that a subpoena be issued from the court for the district in which the hearing or trial is to be held. If the subpoena orders the production or inspection of documents, the subpoena must be issued from the court in which the production or inspection is to be made.

A court cannot act upon a person over which it has no jurisdiction. State courts have jurisdiction only within the boundaries of the state. As a general rule, the federal district courts have jurisdiction within the defined boundaries of their judicial districts or 100 miles beyond "the place of deposition, hearing, trial production, or inspection specified in the subpoena ... ." (As of September 1994, there were 91 federal district courts in the United States.) Agreements, too, have been reached by state and federal courts on where a federal district court subpoena can be served within a state. As the following statement from Rule 45 of the Rules of Civil Procedure states:

"A subpoena may be served at any place within the district of the court by which it is issued, or at any place without the district that is within 100 miles of the place of the deposition, hearing, trial, production, or inspection specified in the subpoena or at any place within the state where a state statute or rule of court permits service of a subpoena issued by a state court of general jurisdiction sitting in the place of the deposition, hearing, trial, production, or inspection specified in the subpoena. When a statute of the United States provides therefore, the court upon proper application and cause shown may authorize the service of a subpoena at any other place." (*Federal Civil Judicial Procedures and Rules, Title 28-Judiciary and Procedure*, 1991 revised edition, St. Paul, Minn.: West Publishing Co., p. 130.)

As a practical example of what is meant by this paragraph, a federal court subpoena can be served in any part of

Pennsylvania even though that state has three federal judicial districts.

6.26.4 Being Presented with a Subpoena

FERPA does not make it mandatory that an institution of higher education automatically comply with a lawfully issued subpoena. To determine if the institution should comply with a subpoena, the following information should be considered.

- Determine if it is a subpoena.

In many cases, the document being presented will "look" like a subpoena. Not all subpoenas are issued by a court. Some public agencies, through the statute that created them, have been given subpoena power. Many of these subpoenas do not look like a court-issued subpoena but may have the same authority. Some valid and invalid subpoenas will appear on letterhead. It is the responsibility of the person served with the subpoena, or his/her institution, to determine if the piece of paper presented has the validity of a legal subpoena (see examples in cases 7.2.1, 7.2.2, and 7.2.3 in chapter 7).

How do we know an agency has subpoena power? Each state has a reference source which identifies current statutes the legislature has enacted. In Pennsylvania, for example, Purdon's *Pennsylvania Statutes* is the source. Each state has similar reference sources which will help determine if a public agency has subpoena power.

- Determine if the court issuing the subpoena has jurisdiction.

The subpoena powers of a court, federal district, state, and county, are limited. In order for the subpoena to be binding upon the institution on which the subpoena is served, it must be issued by an officer of a court that has jurisdiction over the institution. As stated earlier, a federal district subpoena has validity within its legal boundaries (or in all 50 states) as long as the 100 mile rule (see chapter 6.26.2) is observed. However, at the state level, a subpoena issued from a state court in Michigan has no validity in Texas.

In many instances, colleges and universities have complied with subpoenas issued from courts which have no jurisdiction over them. The person served with a subpoena should determine whether a subpoena received is valid before complying. If the court issuing the subpoena does not have jurisdiction, the person upon whom the subpoena was served, or the institution's legal counsel, must inform the maker of this fact. It is then up to the maker to determine if the information is important enough to seek a subpoena from a court which has jurisdiction. Once served with a subpoena bearing the endorsement of the court, an institution should comply with the request rather than face possible contempt of court charges.

- Determine what is requested.

Part of the subpoena identifies what the maker is requesting. In many instances, the wording of what is requested is very broad, suggesting possibly that the person who prepared the subpoena is on a "fishing expedition." Whenever confronted with such wording in a subpoena, the institution has every right to request that the issuer of the subpoena be more specific with the request. In many instances, the person upon whom the subpoena was served may comply with the subpoena by copying selected information from the student's education record folder located in that person's office.

- Determine if what is requested follows the prescription within FERPA (i.e., does it conform to FERPA?).

In some subpoenas, the maker of the subpoena commands the person served with a subpoena to refrain from notifying the subject that the person served with a subpoena is complying with the subpoena. Until September 28, 1994, this would have been a violation of the FERPA requirement to, in all cases, notify the student of the receipt of the subpoena. However, with the legislation enacted on September 28, 1994 (see Appendix 5), the institution is not required to notify the student of the receipt or contents of a federal grand jury subpoena if ordered not to do so. This also applies to any other subpoena issued for law enforcement purposes.

Under FERPA, the requirement that the person served with a subpoena notify the student of the receipt of a subpoena and the institution's probable intent to comply should override any command within a subpoena to the contrary (with the exceptions noted in the previous paragraph). In most cases where this occurs, no judge has reviewed the subpoena before it was issued. It should be quite obvious to anyone who is knowledgeable about FERPA that the issuer of the subpoena does not realize that a prior notification requirement exists within FERPA.

When the subpoena orders the recipient not to notify the student (and the subpoena is not a federal grand jury subpoena or one issued for law enforcement purposes, as mentioned above), it is best to contact the person who issued the subpoena and notify that person of the FERPA requirement. If the issuer insists that the student not be notified, the person served with a subpoena should seek advice of counsel. He/she could also inform the issuer that he/she will only comply with that request upon receipt of a court order from a judge serving on a court that has jurisdiction over the institution served with the subpoena.

The "prior notification" requirement within FERPA regarding subpoenas is intended to alert the student to possible court action and allow him/her to determine if he/she wishes to seek counsel if he/she feels that the subpoena is unwarranted. The student's counsel can make a motion to quash the subpoena in the court from which the subpoena was issued. This was successfully demonstrated in the case of Goldman v. Goldman, Family Court of the State of New York, County of Rockland, V-852/91.

The judge of a court from which a subpoena was issued can order the quashing, or modification, of a subpoena if the subpoena fails to allow reasonable time for compliance or requires disclosure of privileged or other protected matter and no exception or waiver applies.

6.26.5 Rights of a Person When Served with a Subpoena

A person served with a subpoena should not feel intimidated or threatened if he/she understands FERPA and is making an honest effort to comply with the requirements within FERPA.

When a person is served with a subpoena, the party responsible for issuing the subpoena must "take reasonable steps to avoid imposing an undue burden or expense on ... (that person)." If the person served with a subpoena is commanded to produce, permit inspection and copy documents, that person does not have to appear in person, unless specifically ordered to do so. (*Federal Civil Judicial Procedures and Rules, Title 28-Judiciary and Judicial Procedures*, 1991 revised edition. St. Paul, Minn.: West Publishing Co., p. 130.) Also, as indicated above, if the subpoena is issued from a federal district court having jurisdiction, the person served with a subpoena does not have to travel more than 100 miles to provide the deposition or produce documents. The person served with a subpoena may also submit a written objection (see instances below which may apply) to the issuer of the subpoena. This must be done within 14 days after being served or before the time specified for compliance if such time is less than 14 days after service.

If objection is made, the party who served the subpoena is not entitled to inspect the materials specified unless an order of the court permitting inspection is issued. If objection has been made, upon notifying the person served with the subpoena, the party serving the subpoena may move to compel the production of the materials in the original subpoena.

In some cases, the institution may have legal or policy reasons for wishing to object to a subpoena. The institution should have a protocol in place for identifying any such cases. The protocol should require that the institution's attorneys be notified whenever all subpoenas or subpoenas of special types are received. The attorneys can then take responsibility for objecting to the subpoena and/or having it quashed.

6.26.6 Duties in Responding to a Subpoena

According to the federal rules of judicial procedure, the person served with a subpoena shall produce documents "... as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand." (*Federal Civil Judicial Procedures and Rules, Title 28-Judiciary and Judicial Procedure*, 1991 revised edition, St. Paul, Minn.: West Publishing Co., p. 130.)

When the person served with a subpoena withholds information sought in a subpoena "... on a claim that it is privileged or subject to protection ... ," that person shall do it in a way which will "enable the demanding party to contest the claim." (*Federal Civil Judicial Procedures and Rules, Title 28-Judiciary and Judicial Procedure*, 1991 revised edition, St. Paul, Minn.: West Publishing Co., p. 131.)

The person served with a subpoena should always consult with his/her institution's legal counsel regarding the receipt of any subpoena.

6.26.7 Notifying the Student

The subpoena must give the person served with a subpoena a "reasonable time to respond." "Reasonable time" is normally considered ten working days.

Promptly after receiving any valid subpoena, the person served with a subpoena should notify the student of the receipt and that the institution intends to comply (if it does) on a particular date (realistically ten days from the date the subpoena is received). Although not required by FERPA, the notice should inform the student that a motion to quash the subpoena must be filed before that date with a copy to the institution. The notice to the student should ordinarily be sent by certified mail, return receipt. If the time period is short, the person served with a subpoena should contact his/her legal counsel.

In the case of an alumnus with no current address, the institution should do its best to locate him/her within reason and document what was done. Best efforts to notify students/alumni whose addresses, maintained by the institution, may not be current would include: telegram, any special delivery that provides a record of receipt, fax, and telephone with the call noted in the file with a memo. Attorneys involved in the case may also be an appropriate source for obtaining current addresses.

A sample notice used in notifying students about the receipt of a subpoena is found in appendix 15.

6.26.8 Complying with the Subpoena

Once the person served with a subpoena is satisfied that he/she has been served with a valid subpoena from a court having jurisdiction over the institution, that a reasonable attempt has been made to notify the student of the institution's intent to comply with the subpoena, and that a reasonable amount of time has elapsed for the student to react to this notification, the person served with a subpoena can then provide certified copies (never the originals) of the documents requested to the issuer of the subpoena or the agency which collects such documents for court hearings/trials. In certain jurisdictions, it may be possible to submit the requested records to the attention of the presiding judge of the court having jurisdiction in the case.

How Would You Handle ...?

CHAPTER SEVEN

Cases in this chapter will test readers' knowledge, and strengthen their understanding, of FERPA. Most of the cases are real and reflect actual situations that have occurred within U.S. higher education since FERPA was enacted. These cases, therefore, have tested many professionals' knowledge of FERPA and are presented here as a way of preparing readers for actual situations they may encounter. The format for all cases in this chapter is the same: The reader is presented with a situation or document which requires a knowledge of FERPA to resolve. The resolution to each case is found at the end of the chapter. In reading the resolution of each case, the reader should remember that there may be more than one correct resolution.

7.1 Legitimate Educational Interest

7.1.1 The United Campus Ministry Request

Your institution does not consider the student's country of citizenship to be directory information.

The United Campus Ministry, an organization affiliated with your institution, requests a list of foreign students by country of citizenship. The purpose of this request is "to make them feel at home."

Do you comply?

Also, this same group requests a directory of all students, listing local and permanent address and local and permanent phone numbers. All of these items are considered directory information except the permanent phone number.

Do you comply?

7.1.2 The Continuous Search for Money

The Development and Alumni Offices are continuously accessing students' admissions applications to determine if there are potential donors listed on the applications in the form of parents or other relatives. In the course of accessing these files, the people from the Development and Alumni Offices also have access to all other information in the students' folders including letters of recommendation, petitions, grade reports, etc. You have questioned this practice, but were told that although this might not be a "legitimate educational interest," it was in the institution's interest to raise as much money as possible to further its educational mission.

You are concerned about the confidentiality of the information in these folders and the uncontrolled "searching," as you see it, by these two offices.

What do you do?

7.1.3 The Recommendation

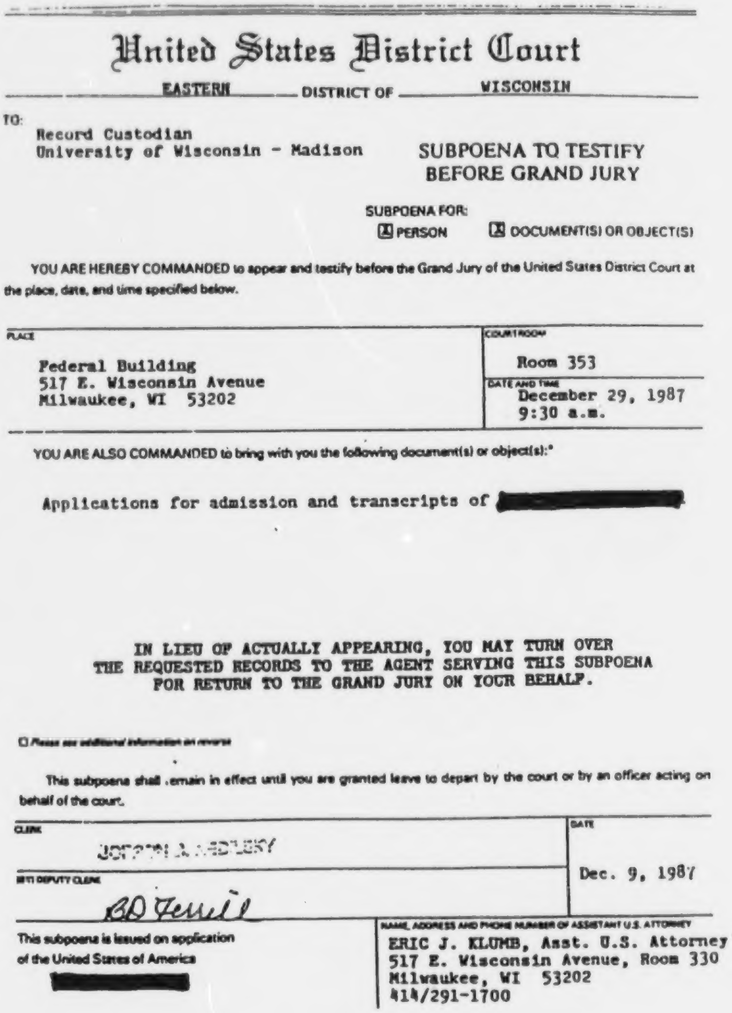
The Liberal Arts office at your institution receives a request from a faculty member in the History Department for a copy of a student's record to help him write a recommendation for the student. Since the student's record can be accessed on-line only by the Registrar's Office and the Liberal Arts Office, the faculty member is requesting this assistance.

Can he receive a copy of the record?

7.2 Subpoenas

In this section, the reader determines the questions to ask or actions to take to determine if he/she would comply with the subpoena. What steps would you take in each case to comply with FERPA requirements?

7.2.1 Subpoena 1



United States District Court

EASTERN DISTRICT OF WISCONSIN

TO:
Record Custodian
University of Wisconsin - Madison

SUBPOENA TO TESTIFY
BEFORE GRAND JURY

SUBPOENA FOR:
☒ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE Federal Building 517 E. Wisconsin Avenue Milwaukee, WI 53202	COURTROOM Room 353
	DATE AND TIME December 29, 1987 9:30 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

Applications for admission and transcripts of [redacted]

IN LIEU OF ACTUALLY APPEARING, YOU MAY TURN OVER
THE REQUESTED RECORDS TO THE AGENT SERVING THIS SUBPOENA
FOR RETURN TO THE GRAND JURY ON YOUR BEHALF.

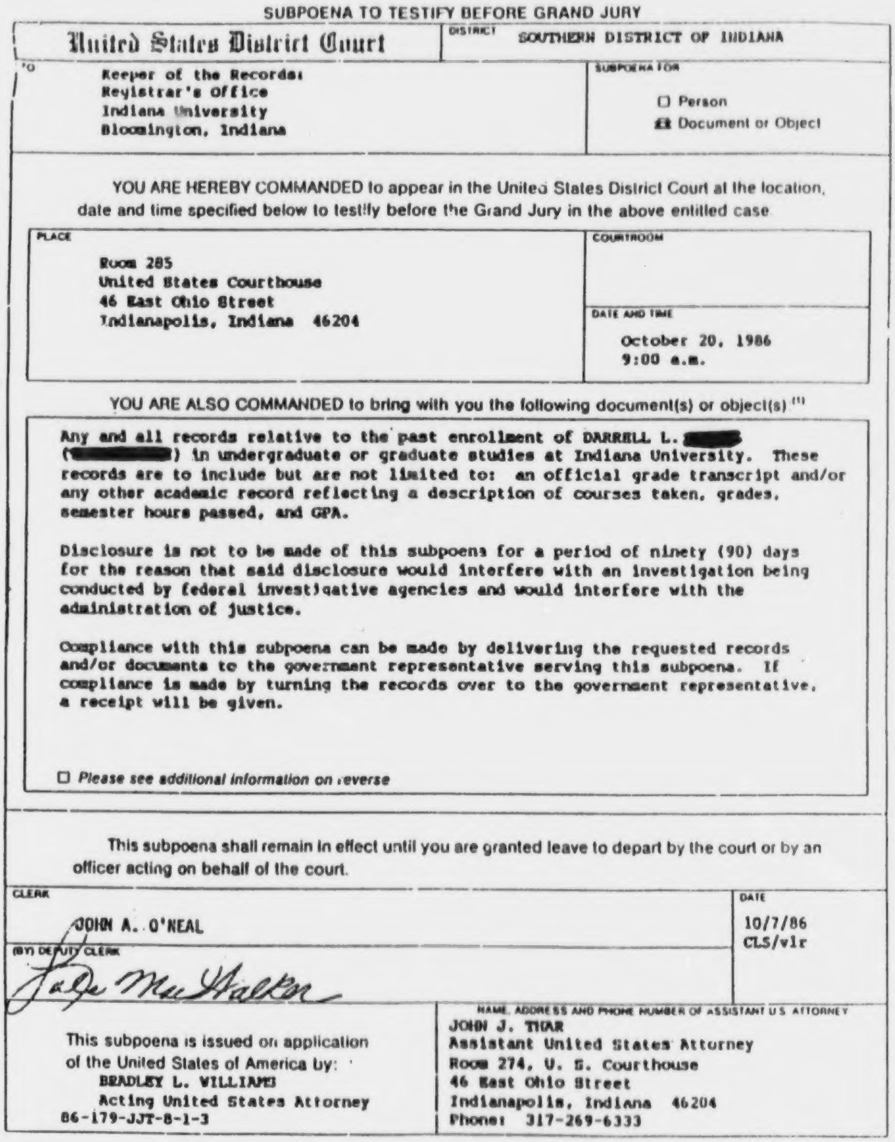
☐ Please see additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK SOFRON B. NEDILSKY	DATE Dec. 9, 1987
(BY) DEPUTY CLERK BD Terrill	
This subpoena is issued on application of the United States of America [redacted]	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY ERIC J. KLUMB, Asst. U.S. Attorney 517 E. Wisconsin Avenue, Room 330 Milwaukee, WI 53202 414/291-1700

BEST COPY AVAILABLE

7.2.2 Subpoena 2



SUBPOENA TO TESTIFY BEFORE GRAND JURY

United States District Court	DISTRICT SOUTHERN DISTRICT OF INDIANA
TO Keeper of the Records: Registrar's Office Indiana University Bloomington, Indiana	SUBPOENA FOR ☐ Person ☒ Document or Object

YOU ARE HEREBY COMMANDED to appear in the United States District Court at the location, date and time specified below to testify before the Grand Jury in the above entitled case.

PLACE Room 285 United States Courthouse 46 East Ohio Street Indianapolis, Indiana 46204	COURTROOM
	DATE AND TIME October 20, 1986 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):[1]

Any and all records relative to the past enrollment of DARRELL L. [redacted] ([redacted]) in undergraduate or graduate studies at Indiana University. These records are to include but are not limited to: an official grade transcript and/or any other academic record reflecting a description of courses taken, grades, semester hours passed, and GPA.

Disclosure is not to be made of this subpoena for a period of ninety (90) days for the reason that said disclosure would interfere with an investigation being conducted by federal investigative agencies and would interfere with the administration of justice.

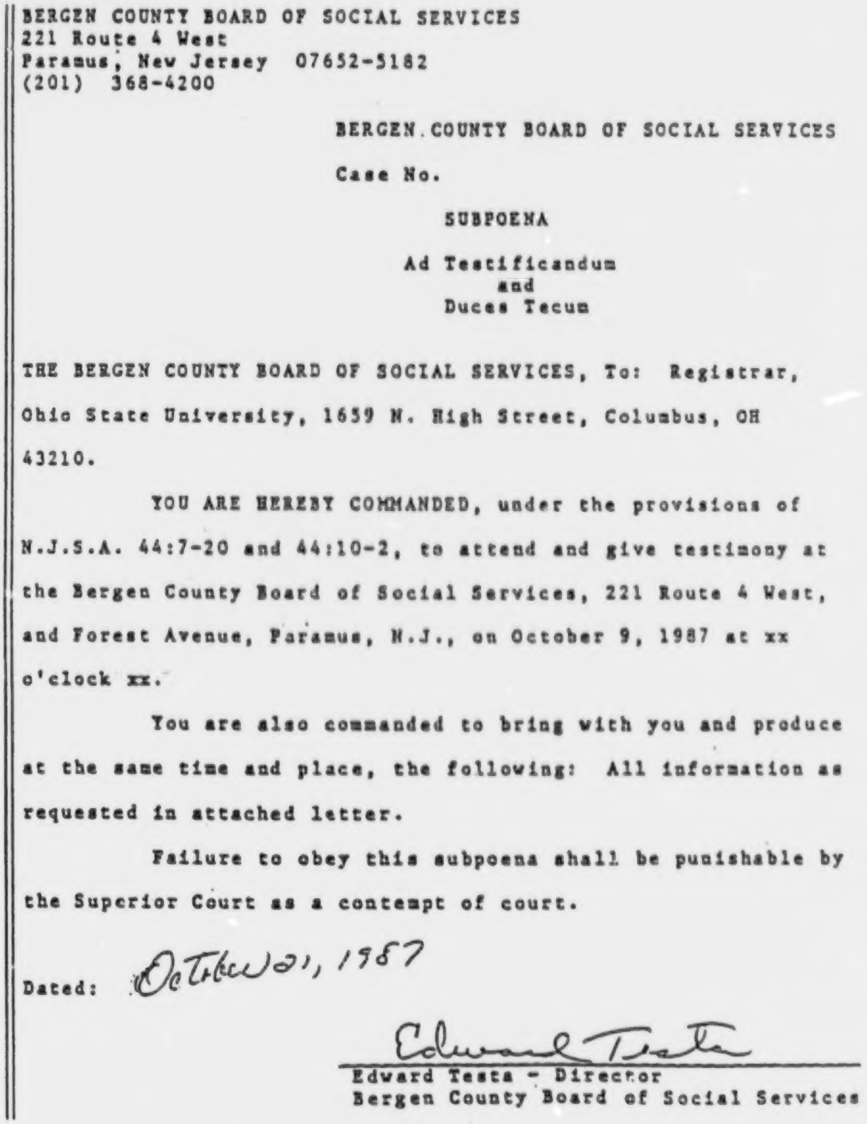
Compliance with this subpoena can be made by delivering the requested records and/or documents to the government representative serving this subpoena. If compliance is made by turning the records over to the government representative, a receipt will be given.

☐ *Please see additional information on reverse*

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK JOHN A. O'NEAL	DATE 10/7/86 CLS/vlr
(BY) DEPUTY CLERK	
This subpoena is issued on application of the United States of America by: BRADLEY L. WILLIAMS Acting United States Attorney 86-179-JJT-8-1-3	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY JOHN J. THAR Assistant United States Attorney Room 274, U. S. Courthouse 46 East Ohio Street Indianapolis, Indiana 46204 Phone: 317-269-6333

7.2.3 Subpoena 3



BERGEN COUNTY BOARD OF SOCIAL SERVICES
221 Route 4 West
Paramus, New Jersey 07652-5182
(201) 368-4200

BERGEN COUNTY BOARD OF SOCIAL SERVICES

Case No.

SUBPOENA

Ad Testificandum
and
Duces Tecum

THE BERGEN COUNTY BOARD OF SOCIAL SERVICES, To: Registrar, Ohio State University, 1659 N. High Street, Columbus, OH 43210.

YOU ARE HEREBY COMMANDED, under the provisions of N.J.S.A. 44:7-20 and 44:10-2, to attend and give testimony at the Bergen County Board of Social Services, 221 Route 4 West, and Forest Avenue, Paramus, N.J., on October 9, 1987 at xx o'clock xx.

You are also commanded to bring with you and produce at the same time and place, the following: All information as requested in attached letter.

Failure to obey this subpoena shall be punishable by the Superior Court as a contempt of court.

Dated: October 21, 1987

Edward Testa
Edward Testa - Director
Bergen County Board of Social Services

7.3 Media

7.3.1 The Release of Confidential Information to the Media

Probably the most publicized national case in recent years regarding the unauthorized release of confidential academic information was at Syracuse University when "a documented instance of plagiarism in the law school record of a U.S. Senator became a national media event." It also "contributed to the senator's withdrawal from the presidential primary race." (Letter from Peter DeBlois, Registrar, Syracuse University, to Richard Rainsberger, Registrar, Carnegie Mellon, June 10, 1988.)

On the state level, a local newspaper published an article which included the grades of a celebrated university basketball player before the player had been notified of his grades. To make matters worse, the player had failed his courses during that term.

In addition to these instances, there have been other less publicized cases which involve the release of student information to the media.

What can you do at your institution to prevent these unwarranted disclosures?

7.3.2 The Scholarship Awards Winners

For many years, Midwestern University, a highly selective institution, has issued press releases identifying currently enrolled students who have won scholarships for the next academic year. Traditionally, along with a student's name, a brief description of the student's academic record is included which indicates the number of letter grades that the student has accumulated at the university. (Obviously, most of the letter grades described are A's.)

Since you are responsible for providing the academic information on these students to the Publicity Office, you indicate in your memo this year that "I believe that the press releases and announcements for these awards should not mention the grades of the recipients.

FERPA protects the grades of outstanding students as well as the average student and I do not think we have the right to announce student grades publicly without permission of the student." A copy of this memo is also sent to the Dean of the College.

Several days later, you receive a memo from the Dean of the College indicating his preference for continuing the tradition of describing the academic records of scholarship winners in press releases and announcements. He bases his preference on the facts that, to his knowledge: 1) no student has ever objected to a description of his or her academic record, 2) all of the students involved review the press release and orally approve of it before publication, and 3) "the audiences for scholarship announcements invariably like to hear about the academic records of the scholarship winners." Nevertheless, he does recognize your concern about the confidentiality of the academic records and he is referring the situation to the university attorney for an opinion.

Several days later, the publicity officer for the university sends you a memo in which he states "...Vague characterizations of a student's record may be the legal safe ground, but in the news game, harder information is usually better. The student's performance in individual courses has never been used ... by us in news releases ... but only such aggregates as 16 A's, four A minuses, and one Pass. To the best of our recollection, we have never distributed such a release without the approval of the individual student concerned. To eliminate this summary of the student's actual achievement is, in effect, to remove the news value of the release and to render it ineffective to a large degree. One could argue that all students at Midwestern are good students (by most measures) and that to say that one more is 'outstanding' without being somewhat specific is fruitless."

You phone the university attorney and ask him if you must have a student's written permission on file to release grades, or is the student's review of a draft of a press release, and subsequent oral approval, enough to allow public announcement and media publication of a student's academic record. How should the university attorney respond?

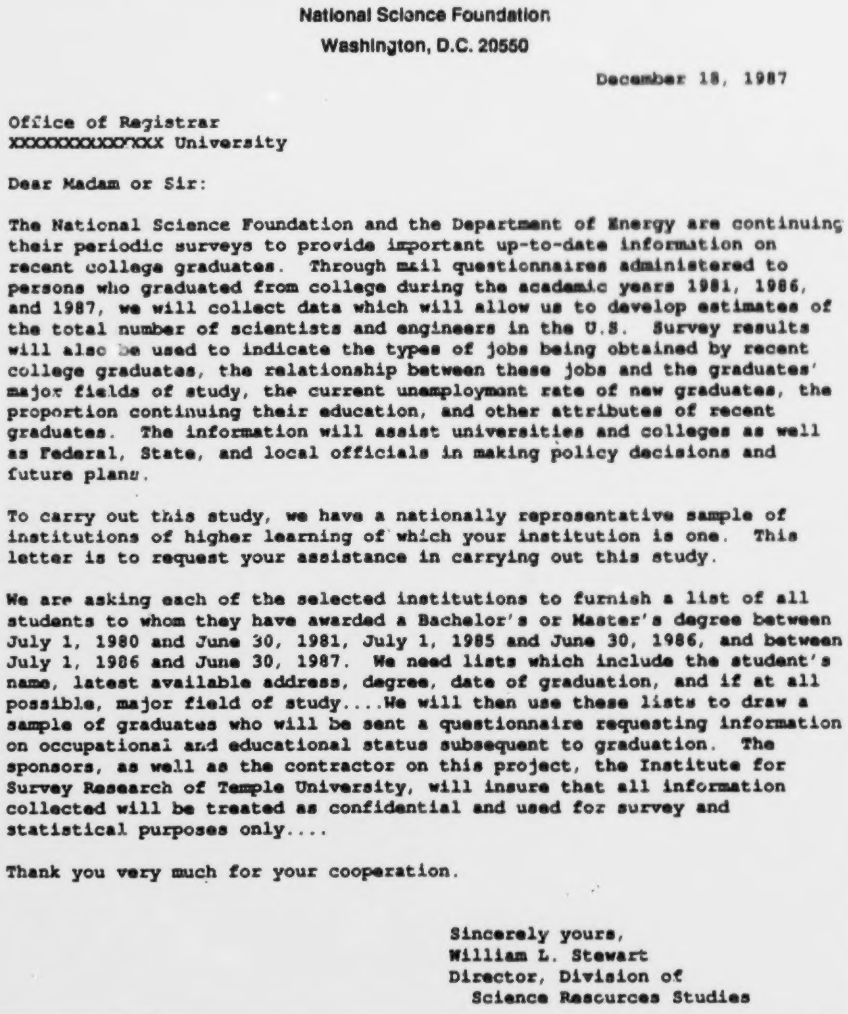
7.3.3 The Newspaper Reporter

A reporter from the local newspaper calls and wants to verify some information on a famous alumnus for an article she is writing. She wants to verify the alumnus' degree, what the degree was, when the degree was received (if he did not receive a degree, she wants to know when he attended your institution), age or birth date, and his address when he attended your institution.

How do you respond?

7.4 Surveys/Research Requests

7.4.1 The National Science Foundation Request



National Science Foundation
Washington, D.C. 20550

December 18, 1987

Office of Registrar
XXXXXXXXXXXXXX University

Dear Madam or Sir:

The National Science Foundation and the Department of Energy are continuing their periodic surveys to provide important up-to-date information on recent college graduates. Through mail questionnaires administered to persons who graduated from college during the academic years 1981, 1986, and 1987, we will collect data which will allow us to develop estimates of the total number of scientists and engineers in the U.S. Survey results will also be used to indicate the types of jobs being obtained by recent college graduates, the relationship between these jobs and the graduates' major fields of study, the current unemployment rate of new graduates, the proportion continuing their education, and other attributes of recent graduates. The information will assist universities and colleges as well as Federal, State, and local officials in making policy decisions and future plans.

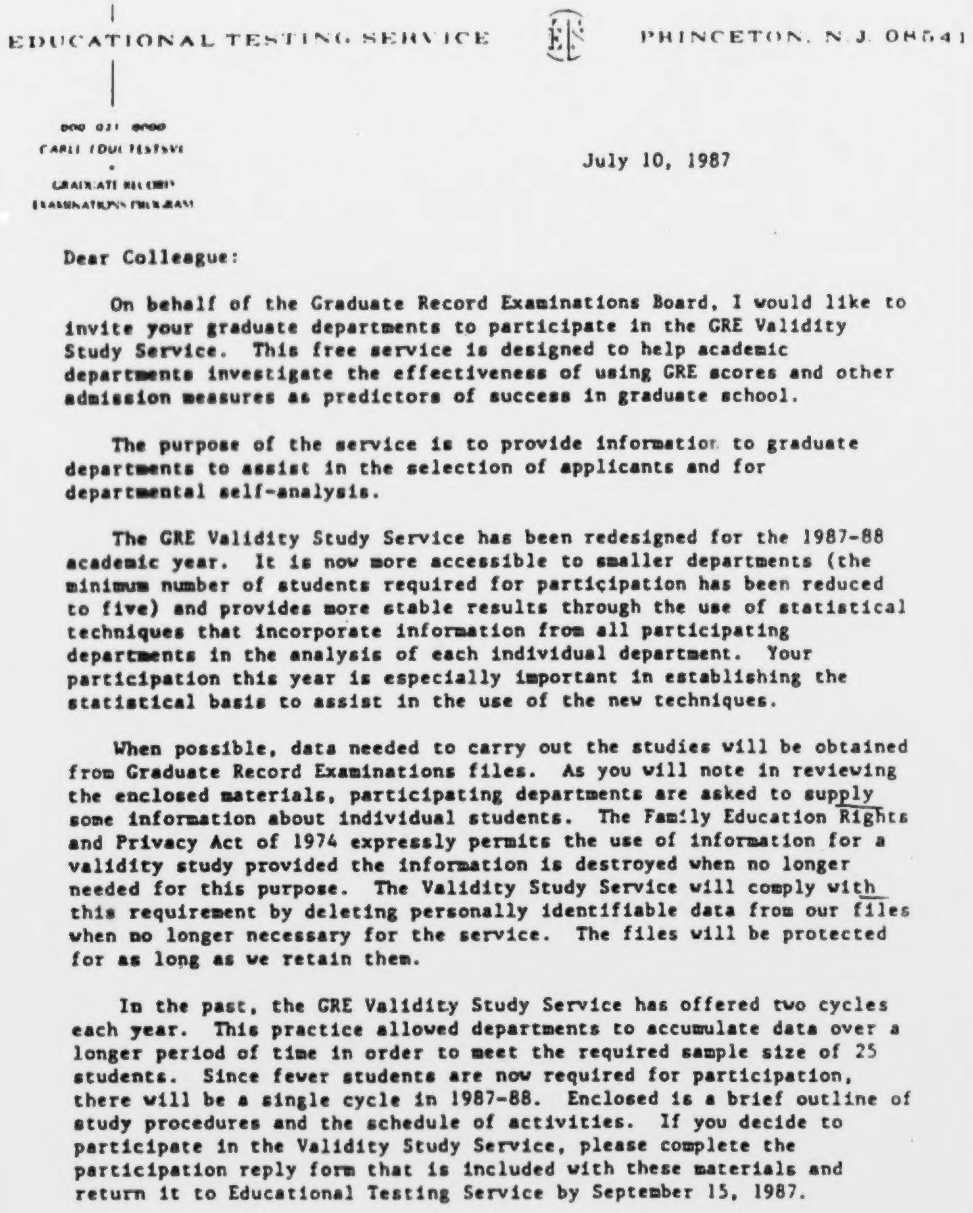
To carry out this study, we have a nationally representative sample of institutions of higher learning of which your institution is one. This letter is to request your assistance in carrying out this study.

We are asking each of the selected institutions to furnish a list of all students to whom they have awarded a Bachelor's or Master's degree between July 1, 1980 and June 30, 1981, July 1, 1985 and June 30, 1986, and between July 1, 1986 and June 30, 1987. We need lists which include the student's name, latest available address, degree, date of graduation, and if at all possible, major field of study....We will then use these lists to draw a sample of graduates who will be sent a questionnaire requesting information on occupational and educational status subsequent to graduation. The sponsors, as well as the contractor on this project, the Institute for Survey Research of Temple University, will insure that all information collected will be treated as confidential and used for survey and statistical purposes only....

Thank you very much for your cooperation.

Sincerely yours,
William L. Stewart
Director, Division of
Science Resources Studies

7.4.2 The Educational Testing Service-Graduate Record Examination Request



EDUCATIONAL TESTING SERVICE PRINCETON, N.J. 08541

CABLE EDUCTESTSVC
•
GRADUATE RECORD
EXAMINATIONS PROGRAM

July 10, 1987

Dear Colleague:

On behalf of the Graduate Record Examinations Board, I would like to invite your graduate departments to participate in the GRE Validity Study Service. This free service is designed to help academic departments investigate the effectiveness of using GRE scores and other admission measures as predictors of success in graduate school.

The purpose of the service is to provide information to graduate departments to assist in the selection of applicants and for departmental self-analysis.

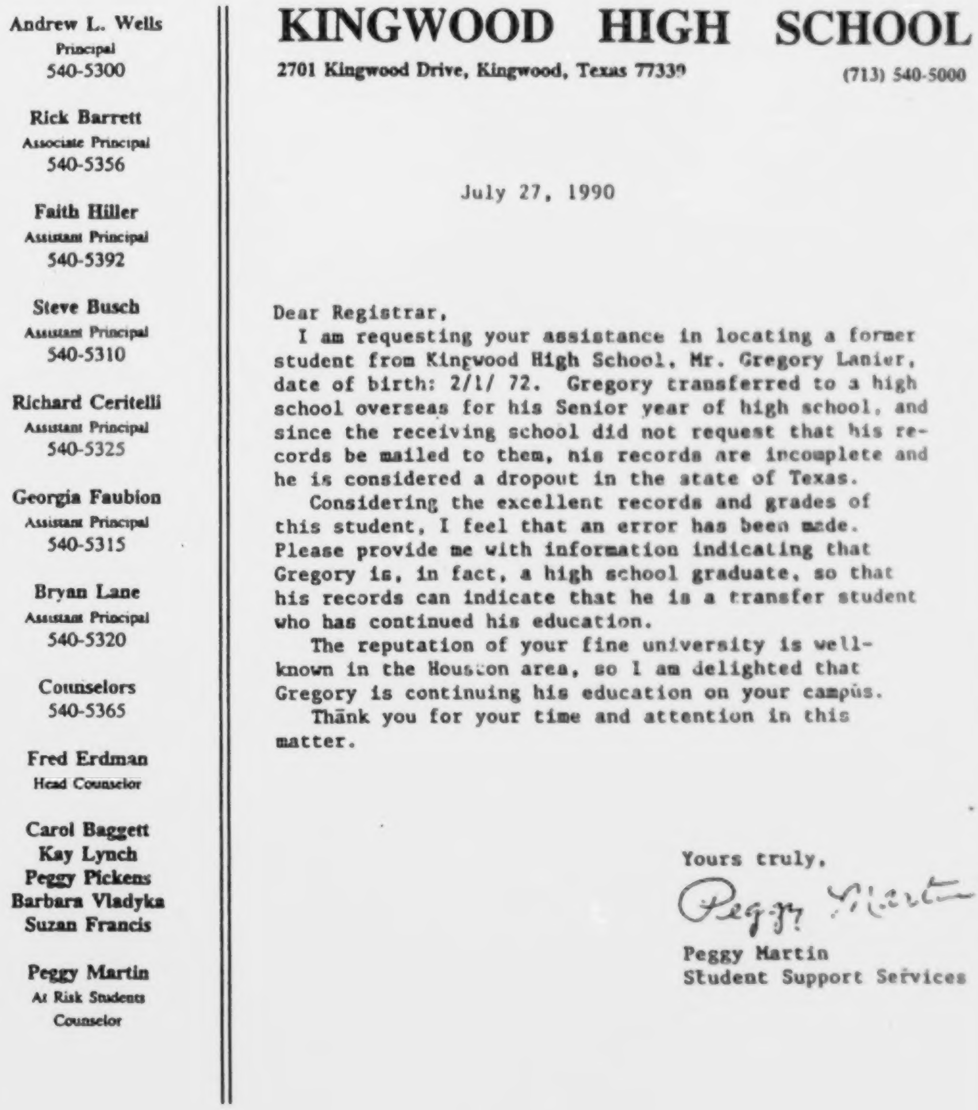
The GRE Validity Study Service has been redesigned for the 1987-88 academic year. It is now more accessible to smaller departments (the minimum number of students required for participation has been reduced to five) and provides more stable results through the use of statistical techniques that incorporate information from all participating departments in the analysis of each individual department. Your participation this year is especially important in establishing the statistical basis to assist in the use of the new techniques.

When possible, data needed to carry out the studies will be obtained from Graduate Record Examinations files. As you will note in reviewing the enclosed materials, participating departments are asked to supply some information about individual students. The Family Education Rights and Privacy Act of 1974 expressly permits the use of information for a validity study provided the information is destroyed when no longer needed for this purpose. The Validity Study Service will comply with this requirement by deleting personally identifiable data from our files when no longer necessary for the service. The files will be protected for as long as we retain them.

In the past, the GRE Validity Study Service has offered two cycles each year. This practice allowed departments to accumulate data over a longer period of time in order to meet the required sample size of 25 students. Since fewer students are now required for participation, there will be a single cycle in 1987-88. Enclosed is a brief outline of study procedures and the schedule of activities. If you decide to participate in the Validity Study Service, please complete the participation reply form that is included with these materials and return it to Educational Testing Service by September 15, 1987.

BEST COPY AVAILABLE

7.4.3 Postsecondary Feedback



KINGWOOD HIGH SCHOOL

2701 Kingwood Drive, Kingwood, Texas 77339
(713) 540-5000

Andrew L. Wells
Principal
540-5300

Rick Barrett
Associate Principal
540-5356

Faith Hiller
Assistant Principal
540-5392

Steve Busch
Assistant Principal
540-5310

Richard Ceritelli
Assistant Principal
540-5325

Georgia Faubion
Assistant Principal
540-5315

Bryan Lane
Assistant Principal
540-5320

Counselors
540-5365

Fred Erdman
Head Counselor

Carol Baggett
Kay Lynch
Peggy Pickens
Barbara Vladyka
Suzan Francis

Peggy Martin
At Risk Students
Counselor

July 27, 1990

Dear Registrar,

I am requesting your assistance in locating a former student from Kingwood High School, Mr. Gregory Lanier, date of birth: 2/1/ 72. Gregory transferred to a high school overseas for his Senior year of high school, and since the receiving school did not request that his records be mailed to them, his records are incomplete and he is considered a dropout in the state of Texas.

Considering the excellent records and grades of this student, I feel that an error has been made. Please provide me with information indicating that Gregory is, in fact, a high school graduate, so that his records can indicate that he is a transfer student who has continued his education.

The reputation of your fine university is well-known in the Houston area, so I am delighted that Gregory is continuing his education on your campus.

Thank you for your time and attention in this matter.

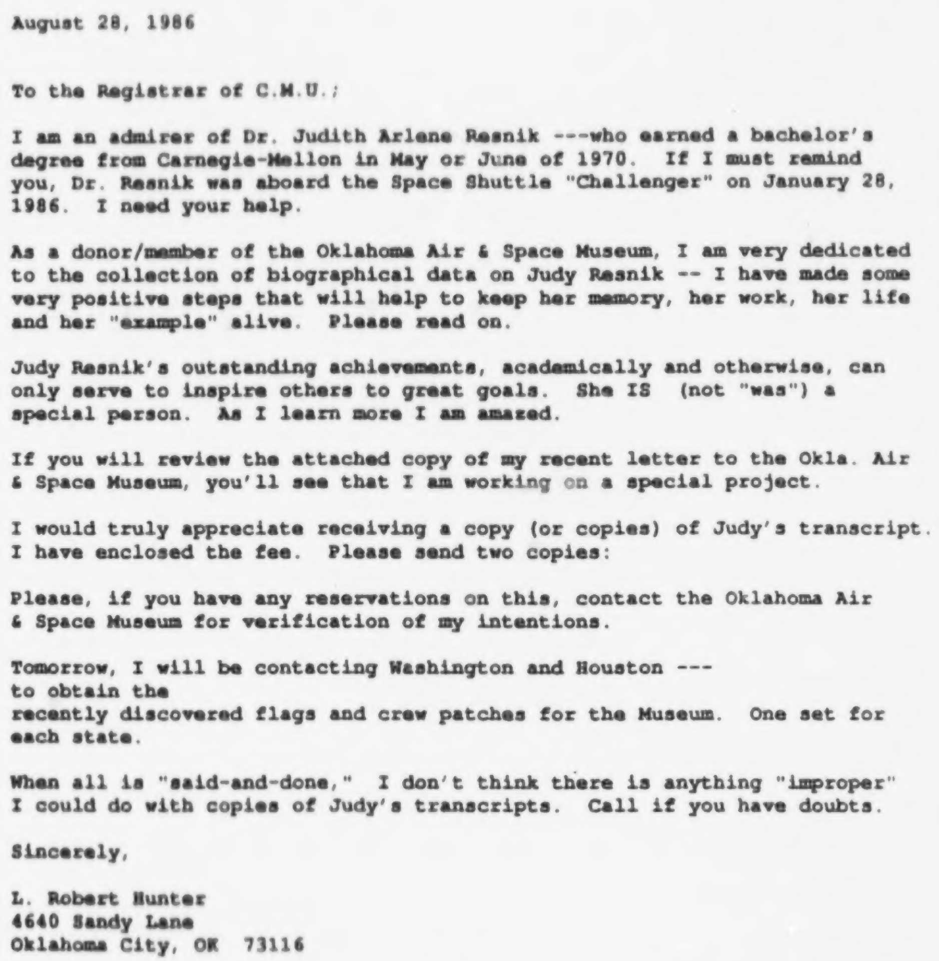
Yours truly,

Peggy Martin

Peggy Martin
Student Support Services

7.5 Deceased Students

7.5.1 Request for Information on Judith Resnik



August 28, 1986

To the Registrar of C.M.U.;

I am an admirer of Dr. Judith Arlene Resnik ---who earned a bachelor's degree from Carnegie-Mellon in May or June of 1970. If I must remind you, Dr. Resnik was aboard the Space Shuttle "Challenger" on January 28, 1986. I need your help.

As a donor/member of the Oklahoma Air & Space Museum, I am very dedicated to the collection of biographical data on Judy Resnik -- I have made some very positive steps that will help to keep her memory, her work, her life and her "example" alive. Please read on.

Judy Resnik's outstanding achievements, academically and otherwise, can only serve to inspire others to great goals. She IS (not "was") a special person. As I learn more I am amazed.

If you will review the attached copy of my recent letter to the Okla. Air & Space Museum, you'll see that I am working on a special project.

I would truly appreciate receiving a copy (or copies) of Judy's transcript. I have enclosed the fee. Please send two copies:

Please, if you have any reservations on this, contact the Oklahoma Air & Space Museum for verification of my intentions.

Tomorrow, I will be contacting Washington and Houston --- to obtain the recently discovered flags and crew patches for the Museum. One set for each state.

When all is "said-and-done," I don't think there is anything "improper" I could do with copies of Judy's transcripts. Call if you have doubts.

Sincerely,

L. Robert Hunter
4640 Sandy Lane
Oklahoma City, OK 73116

7.6 FAX/Decentralized Online Inquiry

7.6.1 The FAX Request

You receive a faxed letter from an ex-student requesting that her transcript be sent to IBM at an address in New York.

Can you comply? What do you need to determine first?

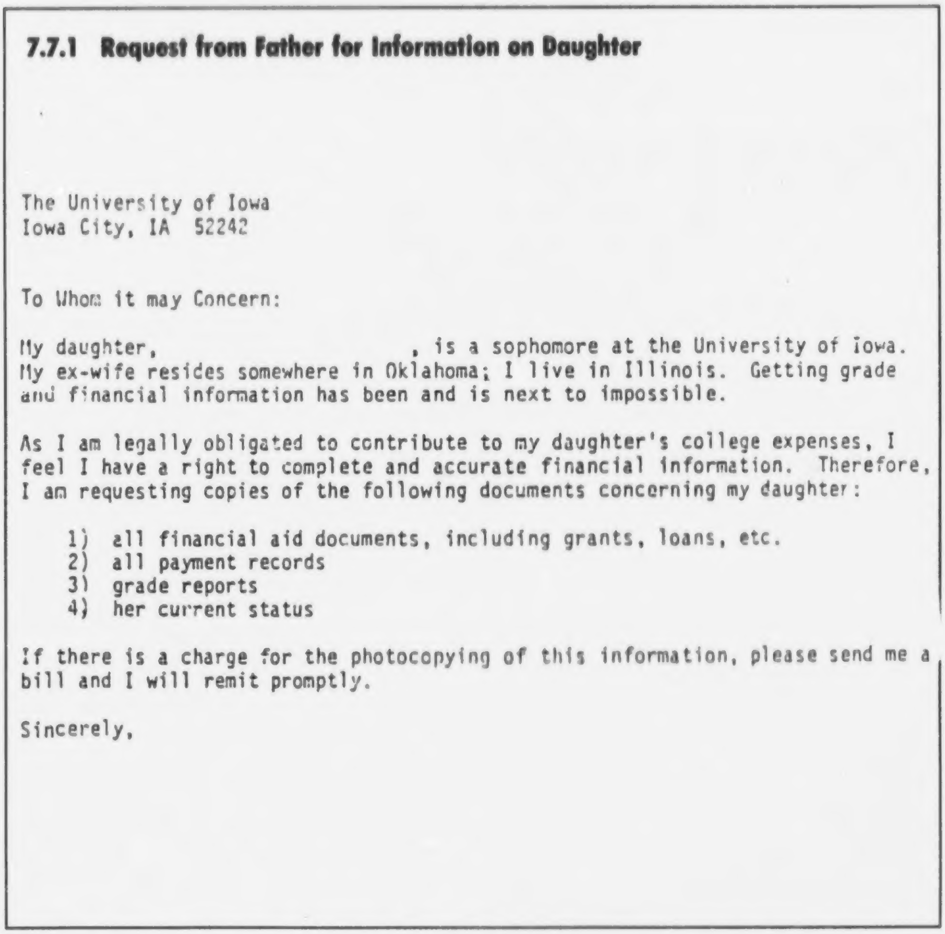
7.6.2 Online Inquiry

Many institutions now provide access to academic records through some form of computerized online access. Many have switched to online advising and transcript systems whereby approved faculty can access a student's official academic record via a terminal located in their office. The underlying assumption is that the Registrar's Office will authorize access to all of the student data traditionally available in hard copy. Protecting the confidential nature of the records and preventing unauthorized changes is a most important responsibility, especially when you have heard comments on your campus that all students' records are available for anyone to see. Although this comment may be overstating the problem, it is a valid concern.

What can you do to assure that this type of decentralized inquiry into student education records will not be abused?

7.7 Parents and Spouses

7.7.1 Request from Father for Information on Daughter



7.7.1 Request from Father for Information on Daughter

The University of Iowa
Iowa City, IA 52242

To Whom it may Concern:

My daughter, , is a sophomore at the University of Iowa. My ex-wife resides somewhere in Oklahoma; I live in Illinois. Getting grade and financial information has been and is next to impossible.

As I am legally obligated to contribute to my daughter's college expenses, I feel I have a right to complete and accurate financial information. Therefore, I am requesting copies of the following documents concerning my daughter:

1) all financial aid documents, including grants, loans, etc.
2) all payment records
3) grade reports
4) her current status

If there is a charge for the photocopying of this information, please send me a bill and I will remit promptly.

Sincerely,

7.7.2 Parent Requests Transcript for Son

A parent calls the Registrar's Office requesting that her son's transcript be sent to ABC College. She indicates that her son has applied for admission to that college and is out of the country and it would take too long for him to sign the written request that is required.

What do you do?

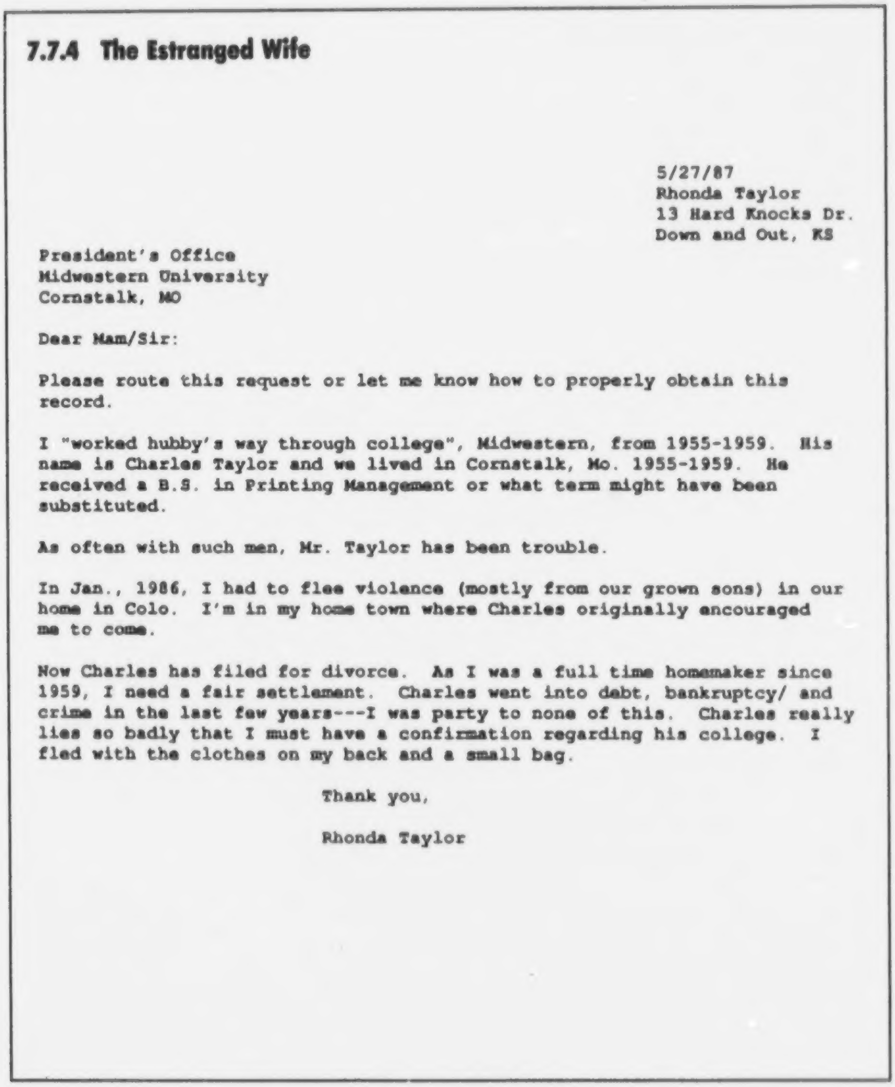
7.7.3 Wife Requests Information on Husband

A wife comes into your office to request a copy of her husband's grades for last semester. She doesn't want anything official, just a printout or some copy will do. Her husband said it would be okay. She filled out the request form that you have in your office and gives it to you.

Would you provide the wife the copy of her husband's grades as she requested?

What would you do?

7.7.4 The Estranged Wife



7.7.4 The Estranged Wife

5/27/87
Rhonda Taylor
13 Hard Knocks Dr.
Down and Out, KS

President's Office
Midwestern University
Cornstalk, MO

Dear Mam/Sir:

Please route this request or let me know how to properly obtain this record.

I "worked hubby's way through college", Midwestern, from 1955-1959. His name is Charles Taylor and we lived in Cornstalk, Mo. 1955-1959. He received a B.S. in Printing Management or what term might have been substituted.

As often with such men, Mr. Taylor has been trouble.

In Jan., 1986, I had to flee violence (mostly from our grown sons) in our home in Colo. I'm in my home town where Charles originally encouraged me to come.

Now Charles has filed for divorce. As I was a full time homemaker since 1959, I need a fair settlement. Charles went into debt, bankruptcy/ and crime in the last few years---I was party to none of this. Charles really lies so badly that I must have a confirmation regarding his college. I fled with the clothes on my back and a small bag.

Thank you,

Rhonda Taylor

7.7.5 The "Closed Record" Request

See document below.

7.8 Emergencies

7.8.1 The Emergency

You receive a visit from the university police department. The officer tells you there has been an emergency and he needs to locate Joe Smith. He wants you to tell him what class the student is presently in and where that class is being held so he can go to the student and talk with him. The officer also tells you that he has been trying to find that student for a week and has been unsuccessful.

Can you assist the officer in locating the student? How?

7.8.2 The Western Union Delivery

An officer from your campus police department contacts you regarding a telegram which Western Union is attempting to deliver to a student. The contents of the telegram indicate that something tragic has happened at the student's home. The officer further states that Western Union is having difficulty delivering the telegram since there are two students with the same name on campus and that the person to whom the telegram should be delivered has signed a confidentiality statement indicating she wanted nothing released to the public. Thus, her campus address is not found in the directory which the police department has. He is calling you to see what can be done.

What can you do?

7.9 Relations with Law Enforcement Units

7.9.1 The Request for Student Schedules

The Security Department at your college has had access to each student's local address and phone number since the enactment of the Buckley Amendment. It has never had access to the schedules of the students. Now, that department is requesting that it have access to student schedules regularly. It claims that it would be faster to contact students in case of an emergency if the schedules were known.

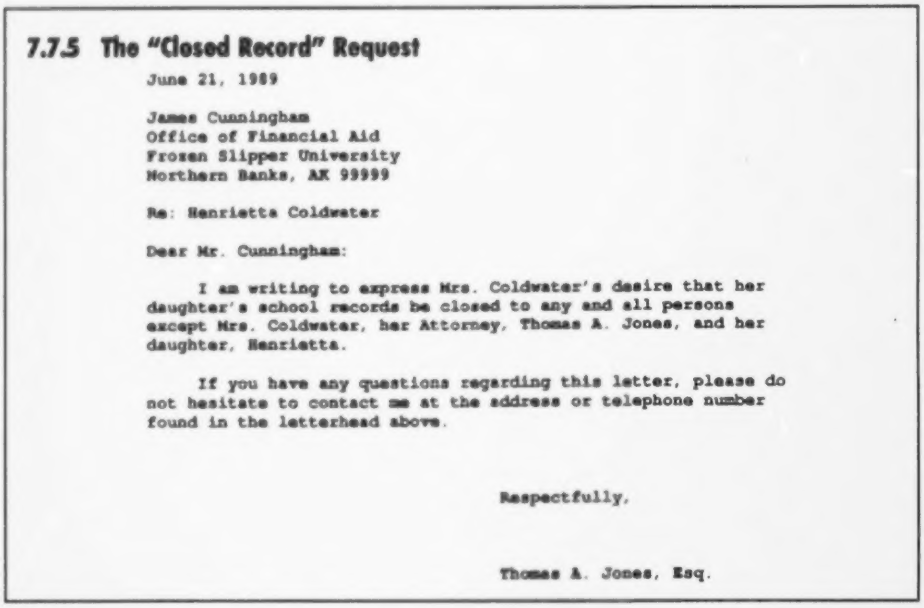
Also, you have heard through the grapevine that the local police department has made a request of your Security Department to cooperate in the elimination of a drug ring which is believed to be centered at the college. The local police department has suggested that the availability of student schedules would be most helpful in apprehending the suspected ring members.

You make the "intuitive leap" that these two requests may be related.

Can you comply? Would you? How might the local police department obtain these student schedules if you did not comply?

7.9.2 Parking Tickets and Graduating Seniors

It is spring and the spring term is winding down, culminating in commencement in a few weeks. While you are contemplating the quiet of the summer season on campus without as many students to worry about, an officer from Campus Police calls.



7.7.5 The "Closed Record" Request

June 21, 1989

James Cunningham
Office of Financial Aid
Frozen Slipper University
Northern Banks, AK 99999

Re: Henrietta Coldwater

Dear Mr. Cunningham:

I am writing to express Mrs. Coldwater's desire that her daughter's school records be closed to any and all persons except Mrs. Coldwater, her Attorney, Thomas A. Jones, and her daughter, Henrietta.

If you have any questions regarding this letter, please do not hesitate to contact me at the address or telephone number found in the letterhead above.

Respectfully,

Thomas A. Jones, Esq.

BEST COPY AVAILABLE 44

He would like to run their parking ticket file against the Registrar's report of graduating seniors. They want to do this so that "holds" can be placed on the diplomas and transcripts of those who have not paid their parking fines.

What do you decide?

7.9.3 The Arrested Student

An officer from a police department in a nearby town calls. The officer states that they have arrested a person who claims to be a student of your college. He is calling to verify this.

You know that this police department has the policy of releasing students for minor infractions (which is involved in this case) if it can be verified that the person is a student.

You check your records and find that this person is a student. There is, however, a signed statement from the student that he wants no information released on him.

Do you verify to the officer that this person is a student? Why or Why not?

7.10 Admissions

7.10.1 The "Denied" Applicant

An applicant to the engineering program was denied admission. Subsequently, he was admitted to the computer science program. This student comes to your office and wishes to inspect his file. You tell him to return the next day.

Since you only have the files on admitted students, the student, upon returning the next day, is upset that the data on his "denied" engineering application is not in his file. He demands to see this information immediately.

You know that this information is kept in the Admissions Office. What do you tell this student?

7.11 Third Party Verification

7.11.1 The Departmental Phone Call

Lynn calls from the Civil Engineering Department. She states that she has had several investigators from different federal agencies and one corporate recruiter asking for information on some of the Civil Engineering graduates. Specifically, they want to look into the students' files to: 1) determine American citizenship, 2) verify the QPA/GPA, and, 3) determine the student's advisor, and 4) determine what the student's degree and major were.

She wants to know what information she can permit these individuals to see.

What would you ask her first, if anything?

Then, what would you tell her?

7.11.2 Verification of Degree

You receive a letter from Seokkyun Lee of Taegu, Korea requesting the verification of the receipt of a degree of a particular individual who claims to have graduated from your college.

Mr. Lee has included a copy of what the applicant indicates is his diploma from your college and a copy of the individual's resume which lists a bachelor's degree from your school.

Upon checking, you can find no record of the individual's attendance.

What can/do you tell Mr. Lee?

7.11.3 Verification of Degree

The personnel department of XYZ Corporation calls and wants to verify that a new employee, Samuel Wynne, has received a Bachelor of Science in Biology degree.

The personnel department says Mr. Wynne has presented a copy of your institution's diploma which indicates he received a B.S. degree from your institution.

The policy of the personnel department is that all employees must provide the department with an official copy of all transcripts of their college work. Mr. Wynne indicates, however, that he cannot do so because he owes the University $2,800 in past tuition and the Cashier has placed a "hold" on the issuance of any transcripts for Mr. Wynne. On the other hand, Mr. Wynne claims that he cannot pay the past due amount without a job and that he is attempting to temporarily satisfy XYZ's policy through a copy of his diploma until an official transcript can be sent.

Upon checking, you find that Mr. Wynne's academic record does not indicate receipt of any degree and that he was academically suspended six months ago after six semesters of attendance.

If you were Registrar, what would you do?

7.12 Students' Requests Relating to Their Education Records

7.12.1 The Phone Call for Grades

It is December. The Fall Semester's grades have just been processed.

You receive a phone call from a person who claims to be Billy Smith. Billy states that he desperately needs to know what his Fall grades are to complete an application for a scholarship which is due the next day.

You tell him that the grade reports will not be sent until tomorrow. Billy asks if there is any way he could get his grades over the phone, since there can be no delay in submitting his application. He is willing to provide his personal identification number and anything else you request to verify that he is who he says he is.

What do you do?

7.12.2 "Confidential References"

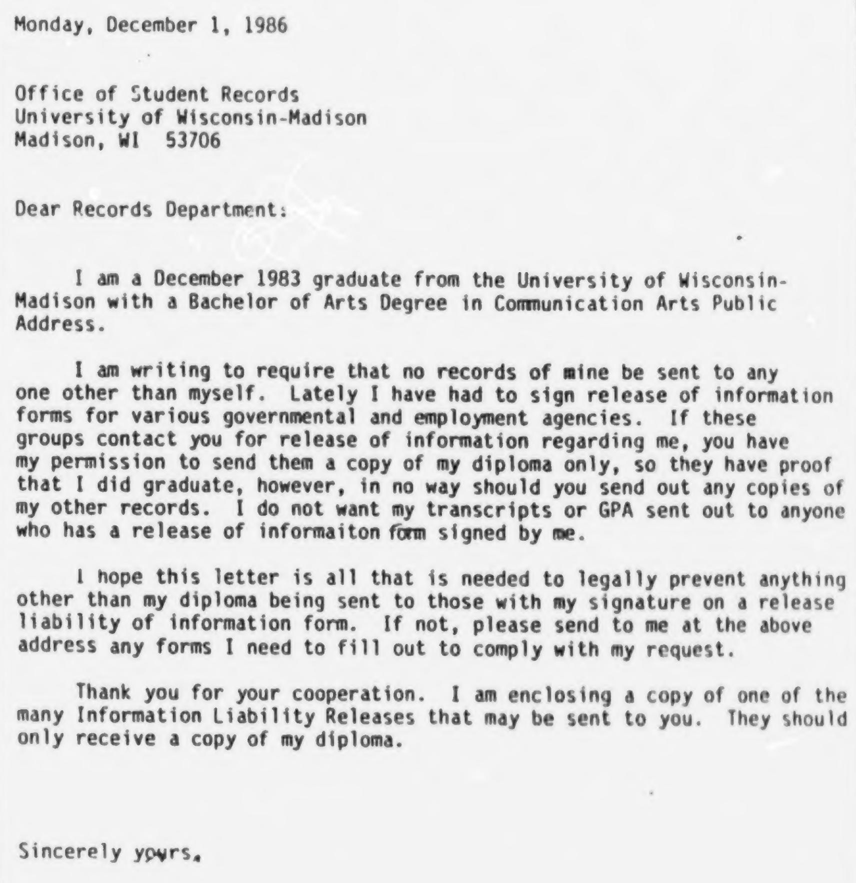
A freshman student, Debra, comes in to see you. She is rather upset and requests to see the references in her "admissions folder." This folder, you know, has been transferred to your—the Registrar's—office after her admission and the contents have been included in her official academic folder. According to the college's policy, you tell her to return tomorrow and the folder will be available for her to review.

Upon reviewing Debra's folder, you find a form. This form was completed as part of her admission application. By completing and signing the form, Debra waived any future right to inspect the comments from her references.

When you see Debra again, do you allow her to see the references? Why or why not?

7.12.3 Student Request Not to Release Education Information

7.12.3 Student Request Not to Release Education Information



Monday, December 1, 1986

Office of Student Records
University of Wisconsin-Madison
Madison, WI 53706

Dear Records Department:

I am a December 1983 graduate from the University of Wisconsin-Madison with a Bachelor of Arts Degree in Communication Arts Public Address.

I am writing to require that no records of mine be sent to any one other than myself. Lately I have had to sign release of information forms for various governmental and employment agencies. If these groups contact you for release of information regarding me, you have my permission to send them a copy of my diploma only, so they have proof that I did graduate, however, in no way should you send out any copies of my other records. I do not want my transcripts or GPA sent out to anyone who has a release of informaiton form signed by me.

I hope this letter is all that is needed to legally prevent anything other than my diploma being sent to those with my signature on a release liability of information form. If not, please send to me at the above address any forms I need to fill out to comply with my request.

Thank you for your cooperation. I am enclosing a copy of one of the many Information Liability Releases that may be sent to you. They should only receive a copy of my diploma.

Sincerely yours,

7.13 Matters Financial

7.13.1 A Student Asks to See His Records

A person comes into the office and asks to look at the contents in his folder. Upon pulling the folder, you notice that he has a financial hold on his record. He owes the college $4,347.80 from the previous year.

Do you show him his folder? Does he have a legal right to obtain an official transcript?

7.13.2 The Defaulted Loan; The Withheld Transcript

As a student at Montana State University, Stanley Juras received several National Direct Student Loans (NDSL). Following his graduation, Mr. Juras defaulted on those loans. When collection efforts proved unsuccessful, Montana State assigned the debt for collection to Aman Collection Services, which obtained a Montana state court judgment against Mr. Juras for the full balance. In attempting to collect the loan, Aman threatened to withhold his transcript.

Mr. Juras then filed an action against Aman in federal district court, alleging that the practice of withholding transcripts of defaulted borrowers violated the United States Constitution, the federal Fair Debt Collections Practices Act, and the now repealed National Direct Student Loan Act. Mr. Juras claimed that he has a "proprietary right or liberty interest in his transcripts and that Montana State was obligated to provide him with a due process hearing before it could deny him a transcript. (Also) Mr. Juras argued that since the NDSL required universities to make student loans without 'security,' a university was violating the act by withholding transcripts from defaulted student borrowers." (Information received from Aman Collection Services Inc., 1 South 1st Street, Box 730, Aberdeen, South Dakota; Joan E. Van Tol (ed.), *College and University Student Records: A Legal Compendium* (Washington, DC: National Association of College and University Attorneys, 1989) pp. 249-250.)

How did the court decide?

7.14 Miscellaneous Items

7.14.1 The Intern

The medical college of your university has an intern who wishes to see his records. Although he had not received his medical training at your medical college, he claims that he has a right to review his records which the medical college is keeping on him as an intern.

Can he see his records?

7.14.2 The INS Request

The local office of the Immigration and Naturalization Service calls and requests an official transcript of a student who is attending your institution on a student (F-1) visa.

Can you comply?

How the Cases Were Resolved

7.1.1 The United Campus Ministry Request

Summary:

United Campus Ministry requests a list of students by country of citizenship. Your institution does not identify country of citizenship as directory information. Do you comply?

This same group also requests a directory of all students that includes information not identified as directory information. Do you comply?

Resolution:

Question #1 — No. The United Campus Ministry does not have official recognition on campus and its leaders do not have FERPA status as "school officials." The Ministry was entitled to directory information only and received only a list of new students.

Question #2 — Yes. You can only release directory information as the students involved have had an opportunity to request that their directory information not be released. Nondirectory information can only be released in similar situations if the students have signed a written authorization specifically permitting you to do so. The permanent phone number was not disclosed.

7.1.2 The Continuous Search for Money

Summary:

Development and Alumni Offices are continuously accessing student records looking for donors. You have questioned this practice and have not gotten cooperation from the Office mentioned above. What can/do you do?

Resolution:

The Registrar first discussed the situation with his superior, outlining the appropriate sections of FERPA that related to "legitimate educational interest." He then got his superior's support to require that each employee of the two offices who viewed these records complete a form documenting the students' records reviewed, the date inspected, and the reasons for the review.

Most reasonable individuals who are familiar with FERPA would not consider these actions valid as an example of "legitimate educational interest" since the definition of legitimate educational interest specifically identifies the educational interest of the student, not of the institution.

Also, if your institution has not specifically defined "legitimate educational interest" and "school officials," as required by FERPA, you need to start there.

7.1.3 The Recommendation

Summary:

A History faculty member requests a student's transcript. Can he receive a copy of the record?

Resolution:

In this instance, the response depends on whether the institution's FERPA policy defines this as a "legitimate educational interest." The professor is a "school official," but if the institution has not specifically identified this practice as a "legitimate educational interest," the request should be denied.

7.2.1 Subpoena 1

Summary:

The Record Custodian at the University of Wisconsin-Madison receives a subpoena from the Eastern District Court of Wisconsin.

Resolution:

The Registrar can comply with the subpoena after making a documented attempt to notify the student involved. The Registrar did not immediately provide copies of the information as requested in the subpoena. He informed the person serving the subpoena that he had a FERPA obligation to notify the student and intended to do so. He complied with the subpoena in 10 working days.

7.2.2 Subpoena 2

Summary:

The Keeper of the Records of Indiana University receives a subpoena issued from the U.S. District Court of Southern Indiana. The second paragraph orders the Keeper of the Records not to disclose the receipt of the subpoena to the student involved for 90 days.

Resolution:

Until September 1994, the Registrar was required by FERPA to notify the student before complying with the subpoena, irrespective of the command in the subpoena not to inform the student for 90 days.

After September 1994, the Registrar can comply with the subpoena without notifying the student in accordance with the command in the subpoena.

7.2.3 Subpoena 3

Summary:

The Registrar of Ohio State University receives a subpoena from the Bergen County (New Jersey) Board of Social Services.

Resolution:

The Bergen County Board of Social Services (a county agency located in New Jersey) has no jurisdiction over Ohio State University.

The Registrar does not have to comply with this subpoena and should notify the Bergen County Board accordingly.

7.3.1 The Release of Confidential Information to the Media

Summary:

What can you do at your institution to prevent unwarranted disclosures of confidential information to the media?

Resolution:

In instances where members of the media seek academic or personal information concerning individuals who have attained celebrity stature, or high public visibility, withholding such information may prove difficult. Media persistence and pressure can be a formidable nuisance and may even have the support of your own institution's public affairs staff.

Such information should be withheld despite media or public affairs pressure. There are no inherent rights of accessibility afforded the media just because an individual is a "public" figure. Even in instances where such information sought has been previously released either by another party or by your institution in error, your responsibility is to adhere to your obligation to prevent further or continued disclosure.

Such high profile cases point to the need for each institution to develop a process to teach strategies for compliance with FERPA to various officials and faculty. They also point out each institution's need to develop a policy on handling requests for information on famous individuals who have attended the institution and are now deceased, since the FERPA rights of the individual cease upon death. This policy could place a moratorium on releasing any information on an individual for perhaps 25-30 years after death.

7.3.2 The Scholarship Awards Winners

Summary:

The Registrar asks the university attorney if the university needs a written release from a student on file before releasing grades that would be included in newspaper articles or if the student's review and subsequent verbal concurrence to a press release are enough to allow the university to legally provide the student's grades/GPA to the media?

Resolution:

The attorney replied that written authorization from students should be sought before any release is made and that release needed to indicate specifically what information could be released and to whom.

7.3.3 The Newspaper Reporter

Summary:

A reporter asks you to verify/provide academic information related to a famous alumnus.

How do you respond?

Resolution:

The Registrar provided information on the degree received, the dates of attendance, and the address of the individual while he/she attended the institution since these are all identified as "directory information" in the institution's FERPA policy. The Registrar cannot disclose the student's age or date of birth since this information was not identified as "directory information."

If the individual did not receive a degree, the Registrar could say, "I cannot confirm the degree." If the reporter asks if the person received any degree, the Registrar could simply reply that he/she had no comment. It is better to provide less rather than more information that is requested of you.

7.4.1/7.4.2 The NSF Request and The ETS-GRE Request

Summary:

Your institution receives letters from the National Science Foundation/NSF and Educational Testing Service/ETS seeking education record information on selected students for research projects with which they were involved.

How do you respond to these requests?

Resolution:

The institution complied with the request since release of academic information to third parties conducting research "to develop, validate and administer predictive tests" or "to improve instruction" is permitted under FERPA. Since the NSF and ETS were nationally known, highly respected organizations conducting research in higher education, the institution believed its participation would benefit not only the institution but higher education in general.

While an individual's address may be considered directory information, depending upon a school's determination of directory information, release should be guided by prudent evaluation of the purpose of the request. In most instances, it is in the best interest of the students not to release their addresses unless the following can be established:

a. That the requesting agency has appropriate status as an educational or research entity (e.g., a state education department, accrediting agencies, NSF or ETS, etc.)

b. That the requesting agency agrees to use the information solely for the purposes of the study or review for which it seeks authorization and that, upon completion of the project, any personally identifiable materials are either returned, destroyed or deleted from databases that may have been created.

Frequently agencies seeking information from universities and colleges will bring their initial request to the AACRAO office in Washington, DC. AACRAO might then endorse the request and recommend your cooperation either by letter or by inclusion in one of its newsletters.

Although the AACRAO endorsement means that the Executive Board has studied the proposal and has approved the request, you must be extremely careful in evaluating such requests for your institution. You may also receive independent requests for education record information for various educational (e.g., Ph.D. dissertations/studies) and non-educational purposes (e.g., addresses for mailing by a car dealership). In general, release of addresses in the latter situation is not recommended.

Additionally, state laws may require institutions to release addresses. When in doubt in such instances, you should contact the Family Policy Compliance Office in Washington, DC. The address and phone/FAX numbers are found elsewhere in this publication.

7.4.3 Postsecondary Feedback

Summary:

A counselor from a high school writes to request that the Registrar verify that one of the high school's ex-students who could not be located graduated from high school.

Resolution:

Directory information of the institution involved did not include "high school graduation." The Registrar, however, wrote a letter to the counselor indicating that one of the admissions requirements for admission to the institution was high school graduation and verified that the student was enrolled. He then forwarded the counselor's letter and his reply to the student.

Institutions may receive requests from high schools or other feeder institutions for follow up information on their former students; some states already require this feedback. See Chapter 6.15 for further discussion.

7.5.1 Judith Resnik - Request for Information

Summary:

The Registrar receives a request for the transcript of Judith Resnik, an astronaut who died in the 1986 Challenger disaster.

Resolution:

FERPA rights cease upon death. Left up to institutional decision, the request for a transcript was denied.

As a result of this request and others like it, the college now has a policy which does not permit the release of education record information of deceased students for 25 years after their death unless authorized by the executor/executrix of the deceased student's estate.

There would have been no FERPA violation if the Registrar had complied.

7.6.1 The FAX Request

Summary:

An ex-student faxes a request to send her transcript to IBM. Can you comply? What do you need to determine first?

Resolution:

Faxed signatures are acceptable under FERPA. The institution regularly accepts faxed signatures to transcript requests. However, the Registrar's Office first had to determine if the signature was bonafide. The Office contacted the ex-student by telephone and explained the procedures/requirements for issuing transcripts, including the necessity for a bonafide signature. This was verified and the faxed request was honored.

7.6.2 Online Inquiry

Summary:

A particular instance could follow the scenario below. It has been brought to your attention by a reliable source that a faculty member, who has been granted computerized online access to student records because of his advising duties, has been checking out the grades of other students and discussing those grades rather freely with others. It is not clear whether the faculty member is simply unaware of his responsibilities with respect to student record data or whether he is blatantly abusing his privileges.

Resolution:

Since protecting the confidential nature of student records and preventing unauthorized release is a very important responsibility, some type of response is in order and should be carried out swiftly. If this is simply a lack of training, the faculty member (as well as any others who might need it) should undergo a review on FERPA, its requirements and the seriousness of the regulations. The user should be required to sign an access form stating their understanding of FERPA and their responsibility to uphold it. If the abuse is more deliberate, general computer access should be revoked and the faculty member, for all future needs, would have to demonstrate a legitimate educational interest on a case-by-case basis before private information could be released.

7.7.1 Request from Father for Information on Daughter

Summary:

The Registrar at a large university receives a letter from a father requesting grades and financial information for his daughter. The father explains that he is legally obligated to provide financial support for his daughter's college expenses. His former wife who lives in a different state apparently did not provide this information to him. He feels he has a right to the information.

Resolution:

FERPA very clearly assigns rights to students once they reach eighteen years of age or enroll in a postsecondary institution.

Included in these rights is the right to release information. In this case, the registrar's office did not provide the requested information to the father. He was told that he needed a written release from the student or had to provide documentation that his daughter was financially dependent. This documentation could be provided by presenting his most recent Federal Income Tax Return.

If one parent claims the student as a dependent for income tax purposes, the institution may disclose information to either parent. The institution should have a policy, as part of its institutional FERPA statement, on the release of information of dependent students to parents. The institution is not required by FERPA to release information, even if dependency is documented.

Additional information on parental access to children's educational records is located in section 5.4 of this *Guide*.

7.7.2 Parent Requests Transcript for Son

Summary:

A parent calls the Registrar's Office requesting that her son's transcript be sent to ABC College. She indicates that her son has applied for admission to that college and is out of the country and it would take too long for him to sign the written request that is required.

Resolution:

This case involves two issues: 1) the practice of accepting telephone requests for transcripts, and 2) a parent requesting a transcript for her son.

The institution should have a clear policy on how to handle telephone requests for transcripts. Most institutions require a written request from the student to release a transcript to a third party. In the 1991 AACRAO Survey on FERPA, only 10% of the responding institutions indicated they would accept a telephone request to release a transcript. Of those institutions which indicated they would honor a telephone request, most qualified this response by indicating they would only release the transcript to another institution to which the student had applied for admission.

The issue of whether a parent has any rights to a son's or daughter's education records was addressed in Case 7.7.1 and is outlined in Section 5.4 of this *Guide*. The issue of whether the student is a dependent must be resolved and the institution should have a clear policy on how to handle requests from parents.

7.7.3 Wife Requests Information on Husband

Summary:

A wife comes into a Registrar's Office to request a copy of her husband's transcript. She does not want an official copy of his transcript, just a printout of his grades. She indicated her husband said it would be okay. She completed a transcript release form and submits it to the office.

Resolution:

FERPA privacy and disclosure rights are assigned to the student.

Only the student can authorize the release of information contained in the student's education records other than directory information or specific exceptions outlined in FERPA. In this case, the Registrar's Office should require the written authorization from the student to release this information to his wife. In the absence of any student-initiated release or legal order, e.g... court order, subpoena or power of attorney, the Registrar's Office should not comply with the wife's request.

7.7.4 The Estranged Wife

Summary:

A woman mails a letter to the President's Office of a large Midwestern university. In her letter, she indicates she supported her husband while he attended college and earned his degree at the university nearly thirty years ago. Her husband has filed for divorce. She claims that her husband went into debt, bankruptcy and crime during the years leading up to the divorce. Due to violence, she fled her home and is attempting to receive a fair settlement in the divorce. She claims she had been a full time homemaker for the past thirty years and needs verification of her husband's college education.

Resolution:

The resolution to this case is very similar to any case where a third party is seeking access to a student's education record without the written permission of the student. Directory Information is all that should be released. Although there are specific exceptions which permit an institution to release education records without the written authorization of the student, in this case, the student's authorization is required since an estranged wife is not included in the exceptions.

The wife will probably seek legal counsel as part of the divorce action. Her attorney could obtain access to the husband's education records via a subpoena if all legal requirements are met in the court which has jurisdiction.

7.7.5 The "Closed Record" Request

Summary:

The Financial Aid Office at a state university receives a letter from an attorney indicating that his client requests that her daughter's education records be closed to all persons except the mother (who is the client) and the daughter.

Resolution:

As indicated in earlier cases, a student enrolled in postsecondary education is protected by the privacy rights in FERPA. The student is the only person who may authorize the release or non-release of student information. In this case, the request was denied with an explanation.

FERPA does permit parents to have access to a student's record if the parent can document the student is a dependent as defined by the U.S. Department of Treasury, Internal Revenue Service guidelines and the institution has a practice of providing information to parents. Institutions are required to annually notify students of their privacy rights and provide them with the opportunity to prohibit the release of directory information.

7.8.1 The Emergency

Summary:

You receive a visit from the university police department. The officer tells you there has been an emergency and he needs to locate a particular student. He wants you to tell him what class the student is presently in and where that class is being held so he can go to the student and talk with him. He continues by telling you that he has been trying to find that student for a week and has been unsuccessful.

Resolution:

If the officer expects release based on a crisis or emergency situation, it is important that enough information be obtained from the officer to determine if such an emergency exists. The "tests" for such a situation are outlined in section 6.6 of this *Guide*. However, since the officer mentioned that he had been trying to find the student for a week, it would seem unusual that a true emergency exists. If the emergency test is not met, the information should not be released to the officer without a lawfully issued subpoena or court order.

7.8.2 The Western Union Delivery

Summary:

An officer from your campus police department contacts you regarding a telegram which Western Union is attempting to deliver to a student. The contents of the telegram indicate that something tragic has happened at the student's home. The officer further states that Western Union is having difficulty delivering the telegram since there are two students with the same name on campus. Also the person to whom the telegram should be delivered has signed a confidentiality statement indicating she wanted nothing released to the public. Thus, her campus address is not found in the police department directory. He is calling you to see what can be done.

Resolution:

It would appear that a true emergency exists in this case and it is important that the telegram be delivered as soon as possible. Since the address information is not considered directory information by the institution, it cannot be released directly to Western Union. However, it could be released to the campus police under legitimate educational interest/emergency situation and the campus police could deliver the telegram.

7.9.1 The Request for Student Schedules

Summary:

The Security Department at your college has had access to each student's local address and phone number since the enactment of the Buckley Amendment. It has never had access to the schedules of the students. Now, that department is requesting that it have access to student schedules regularly. They claim that it would be faster to contact students in case of an emergency if the schedules were known.

Also, you have heard through the grapevine that the local police department has made a request of your Security Department to cooperate in the elimination of a drug ring which is believed to be centered at the college. The local police department has suggested that the availability of student schedules would be most helpful in apprehending the suspected ring members.

You make the "intuitive leap" that these two requests may be related.

Resolution:

The request was denied for two reasons: 1) the institution did not have a clearly defined policy on what constituted legitimate educational interest, and 2) student schedules were not identified by the institution as directory information.

Subsequently, the institution clarified its FERPA statement on legitimate educational interest and included security officers in its definition of "school officials." The security officers were given FERPA training and gained access to student schedules. This office was specifically prohibited from releasing nondirectory information to third parties.

7.9.2 Parking Tickets and Graduating Seniors

Summary:

Campus Police would like to run their parking ticket file against the Registrar's report of graduating seniors. They want to do this so that "holds" can be placed on the diplomas and transcripts of those who have not paid their parking fines.

Resolution:

Since the report of graduating seniors is directory information and campus police are considered "school officials," the request was approved.

Even if the report of graduating seniors was not directory information, the request could still be approved since this is an internal, administrative operation which falls under the institution's definition of "legitimate educational interest." See appendix 11.

7.9.3 The Arrested Student

Summary:

An officer from a police department in a nearby town calls. The officer states that they have arrested a person who claims to be a student of your college. He is calling to verify that claim.

You check your records and find that this person is a student. There is, however, a signed statement from the student that he wants no information released on him.

Resolution:

The Registrar told the officer that she was unable to release any information without written student permission. She suggested that, if possible, the student fax her a release of his nondisclosure request, or have the release delivered to her.

7.10.1 The "Denied" Applicant

Summary:

A student denied admission to an engineering program is subsequently admitted to the computer science program. He requests to see the records regarding his application to the engineering program.

Resolution:

The request was denied.

FERPA rights are provided only to applicants upon actual acceptance and subsequent enrollment. Applicants who are denied admittance to an institution have no FERPA rights. Individuals admitted to a program have access to their own admissions records only after their enrollment. Likewise their right of access is limited solely to their specific program not to another. In addition, an individual who audits a course is not in the same position as one who has been granted formal admission ... is not granted the rights and obligations accorded a registered and fully admitted student (c.f. Tarka vs Franklin, 891F 2d 102 United States Court of Appeals, Fifth Circuit, 1989 (Texas)).

Students admitted to and enrolled in a program shall, upon request, be given access to their admissions records on file at the institution, with the exception of letters of recommendation to which the student had previously waived his/her rights to review and any recommendation letters issued prior to January 1, 1975.

7.11.1 The Departmental Phone Call

Summary:

Investigators are asking a departmental assistant to provide information on some students.

She wants to know what she can provide to them. What do you ask her first, if anything? Then, what would you tell her?

Resolution:

The Registrar asked Lynn if the investigators had signed releases from the students involved. She said "no." He then asked her to provide the names of the students. He checked the student information system to see if any of the students had placed a nondisclosure request on their record. Finding no records of nondisclosure, he then told Lynn that she could only release information that the institution had identified as directory information. In this case, the information Lynn could provide to the investigators was major and degree since those two items were identified as directory information by the institution.

If the investigators had signed releases from the students, Lynn could have provided more information as long as the specific nondirectory information was included in the signed releases of the students.

7.11.2/7.11.3 Verification of Degree

Summary:

In both cases, there is a third party request to verify a degree. You either cannot find a record of the student's attendance or receipt of a degree. What do you tell the third party?

Resolution:

The registrars in both cases, after checking to determine if the ex-students had filed nondisclosure requests before they left the institution, simply replied that they could not verify the degree – nothing more, nothing less.

How would you deal with a situation where you 1) have a student who attended your institution, but did not receive a degree, 2) has filed a nondisclosure request with you, and 3) is representing that s/he received a degree from your institution to prospective employers? In instances where students have barred release of information, the requester should be advised that you cannot respond without a written release from the job applicant. You can also suggest that the individual send an official transcript to the requester.

It appears that fraud may have been perpetrated. You may wish to ask the requester to send you a copy of the document for your review. You may then verify the authenticity of the document, but not the information on it. You may also wish to bring this information to the attention of your school attorney to discuss possible action on the part of the institution. Remember, however, the potential fraud has been perpetrated on the third party, not on the institution.

7.12.1 The Phone Call for Grades

Summary:

You receive a phone call from a person stating that he desperately needs to know what his Fall grades are.

Resolution:

FERPA requires a signed release before releasing private information to a third party. It does not preclude you from releasing information to the student whose record is in question. If you can verify through a combination of PIN, student identification number, date of birth, parents name, etc. (i.e., information that only the student would normally know) that you are actually talking with the student who is requesting grades, the information may be released. Otherwise, it should not be released. As an added precaution, you could return a call to the student at one of the phone numbers on your student record files before releasing the information.

7.12.2 "Confidential References"

Summary:

A freshman student asks to see the references in her "admissions folder." According to the college policy, you tell her to return tomorrow and the folder will be available for her to review.

Upon reviewing the folder, you find a form signed by the student by which she waived any future right to inspect the comments from her references.

Resolution:

By signing the form, the student has waived her rights to review those references and cannot now change her mind. The privacy of the recommender's comments must now be protected. When she returns the following day, these letters should not be available for her review. Instead, she should be provided with an explanation and, if requested, a copy of the waiver she signed.

7.12.3 Student Request Not to Release Education Information

Summary:

A former student of the University of Wisconsin has sent a request for nondisclosure of all academic information except for information contained on the diploma. The former student has also signed authorization for release of his academic information to prospective employers. He now wants to rescind those releases and gives you written instructions to do so.

Resolution:

This has two correct answers.

The Registrar does not have to honor the request from the student since the nondisclosure request must be made as a student, not as a former student. Also, nondisclosure applies only to directory information. See Chapter 6.25.

The Registrar could honor the request since FERPA allows institutions to grant additional rights to the former student if that right is not specifically prohibited by FERPA. Thus, the institution could honor the request for nondisclosure by the former student but does not have to do so.

7.13.1 A Student Asks to See His Records

Summary:

A student asks to see his records. You note that he has a financial hold on his record. Do you comply with the student's request? Does the student have a legal right to obtain a copy of his transcript?

Resolution:

Answer to question #1—The student does have a right to inspect the contents of his student folder regardless of his financial status with the institution. You have 45 days to comply with the request unless your FERPA institutional policy statement indicates fewer days to comply.

Answer to question #2—No. The institution is not required to release an official transcript if the student has a past due account with the institution and the institution has a policy to that effect.

Bankruptcy, however, removes any financial obligations the student had to the institution. In this instance, the institution should comply with the request to send an official transcript. (Paul Tanaka, "The Permissibility of Withholding Transcripts Under the Bankruptcy Law", Pamphlet of the National Association of College and University Attorneys, Washington, D.C., 1986.)

7.13.2 The Defaulted Loan; The Withheld Transcript

Summary:

Student Juras received a National Direct Student Loan. He defaulted on the loan. Collection was assigned to Aman Collection Services and threatened to withhold Juras' transcript. Juras sued to prevent the institution from withholding the transcript for various constitutional reasons. How did the court decide?

Resolution:

The court decided in favor of Aman and the University.

7.14.1 The Intern

Summary:

The medical college of your university has an intern who wishes to see his records. Although he had not received his medical training at your medical college, he claims that he has a right to review his records which the medical college is keeping on him as an intern.

Resolution:

An intern is not considered a student and as a result has no FERPA right to see his record. He should be advised to obtain the desired copy directly from the institution he/she attended.

Note: In many states interns and residents are considered employees and are not accorded student status.

7.14.2 The INS Request

Summary:

An Immigration and Naturalization Service (INS) official requests an official transcript of a student attending on an F-1 visa.

Resolution:

The Registrar complied with the request since part of the I-20 form that the student signed authorizes release of such information.

All students, regardless of origin or visa status, have FERPA rights. Requests from agencies must have the written authorization of the student to release nondirectory information. In some instances, the student's application for, or acceptance of, a visa automatically provides such authorization to INS (e.g., signed I-20 or IAP-66 form).

APPENDIX 1

THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 AS AMENDED

UNITED STATES CODE ANNOTATED

TITLE 20

EDUCATION

Ch. 31 ADMINISTRATION OF PROGRAMS 20 1232G

1232g. Family educational and privacy rights

Conditions for availability of funds to educational agencies or institutions: inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following material:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting an admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (I) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should no be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federally-supported education programs; record-keeping

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection

(a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (I) the comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting function;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or

BEST COPY AVAILABLE

other records which may be necessary in connection with the auditing and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

Surveys or data-gathering activities; regulations

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or date-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

Students' rather than parents' permission or consent

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Informing parents or students of right under this section

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

Enforcement; termination of assistance

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

Office and review board; creation; functions

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Pub.L. 90-247, Title IV, 438, as added Pub.L. 93-380, Title V, 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93-568, 2(a), Dec. 31, 1974, 88 Stat. 1858.

1988 Supplementary Pamphlet

EDUCATION 20 1232g

1232g. Family educational and privacy rights

[See main volume for text of (a)]

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of Federal-supported education programs; record-keeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following-*[See main volume for text of (A) to (I), closing provisions; (2) to (4)]*

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

[See main volume for text of (c) to (g)]

(As amended Pub.L. 96-46, 4(c), Aug. 6, 1979, 93 Stat. 342.)

Appendix 2

1988 FINAL REGULATIONS

DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary revises and renames the Department of Education regulations formerly titled the Privacy Rights of Parents and Students. These regulations are retitled Family Educational Rights and Privacy and eliminate some of the regulatory requirements placed on educational agencies and institutions. The regulations have also been rewritten for clarity.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell or Connie Moore, Family Policy and Regulations Office, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3021, Federal Office Building No. 6), Washington, DC 20202. Telephone: (202) 732-2057.

SUPPLEMENTARY INFORMATION: Under Executive Order 12291, the Department of Education regularly reviews its regulations to determine whether the Department can decrease burdens on the public and otherwise simplify and clarify existing regulations. As part of this process, the Department has reviewed the regulations implementing the Family Educational Rights and Privacy Act (FERPA).

The FERPA regulations of the former Department of Health, Education, and Welfare (HEW) (45 CFR Part 99) were transferred to the Department of Education (ED) and recodified in Part 99 of Title 34 of the Code of Federal Regulations on May 9, 1980 (45 FR 30802). These regulations implement FERPA, which was enacted as section 438 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232g).

The FERPA sets out requirements designed to afford parents and students privacy and other rights with respect to education records. The statute applies to educational agencies and institutions that receive funds under an applicable program administered by ED. For purposes of FERPA an applicable program is a program that was either formerly administered by the Commissioner of Education prior to the establishment of ED on May 4, 1980 or any program that came into existence after ED was established, unless the law creating the new program has the effect of making FERPA inapplicable. Educational agencies and institutions to which FERPA applies must maintain education records consistent with the requirements of FERPA. In brief, FERPA requires those agencies or institutions to provide parents and eligible students access to records directly related to the students; to permit parents and eligible students to challenge those records on the grounds that they are inaccurate, misleading, or otherwise in violation of the student's privacy or other rights; to obtain the written consent of parents and eligible students before releasing personally identifiable information about the students contained in education records to other than organizations or individuals described in statutory exceptions; and to notify parents and eligible students of these rights.

On June 10, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the ***Federal Register*** (52 FR 22250). The NPRM included a discussion of the numerous revisions and invited public comment. The revisions are intended to simplify and clarify the regulations and not to alter any interpretation under existing regulations.

In response to the Secretary's invitation in the NPRM, educational associations, organizations, universities, and individuals submitted 20 letters, which contained a total of 113 comments. More than half of the letters were from institutions of higher education and were transmitted through an organization representing the higher education community. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Executive Order 12606

The Secretary has reviewed these regulations in accordance with Executive Order 12606, "The Family." The regulations were assessed in light of the criteria set forth in the Executive Order to determine whether they have any potential negative impact on the family. They were found to have no negative impact. In fact, the regulations will strengthen the autonomy, stability, and rights of the family unit.

The criterion of the Order which is most applicable to these regulations asks: "Does this action strengthen or erode the authority and rights of parents in the education, nurture, and supervision of their children?" The statute and the implementing regulations strengthen the rights of parents by reaffirming their basic right to have access to the education records of their children, their right to be assured of the privacy of their children's records, and their right to challenge records believed to be inaccurate, misleading, or otherwise in violation of the student's privacy.

Another criterion which is applicable to these regulations asks: "Does this action by government strengthen or erode the stability of the family and particularly, the marital commitment?" Overall, these regulations are found to strengthen the stability of the family. In particular, the FERPA provisions which afford parents the right to have access to and some control over the education records of their children serve to encourage parents to be involved in the education of their children. Furthermore by affording both parents (whether custodial or non-custodial) the right to have access to the records, the regulations serve to encourage joint parental involvement in their children's education.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education department, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students. (Catalog of Federal Domestic Assistance number does not apply.)

Dated February 19, 1988

William J. Bennett,
Secretary of Education

The Secretary revises Part 99 of Title 34 of the Code of Federal Regulations to read as follows:

PART 99-FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A-General

Sec.
99.1 To which educational agencies or institutions do these regulations apply?
99.2 What is the purpose of these regulations?
99.3 What definitions apply to these regulations?
99.4 What are the rights of parents?
99.5 What are the rights of eligible students?
99.6 What information must an educational agency's or institution's policy contain?
99.7 What must an educational agency or institution include in its annual notification?

Subpart B-What are the Rights of Inspection and Review of Education Records?

99.10 What rights exist for a parent or eligible student to inspect and review education records?
99.11 May an educational agency or institution charge a fee for copies of education records?
99.12 What limitations exist on the right to inspect and review records?

Subpart C-What are the Procedures for Amending Education Records?

99.20 How can a parent or eligible student request amendment of the student's education records?
99.21 Under what conditions does a parent or eligible student have the right to a hearing?
99.22 What minimum requirements exist for the conduct of a hearing?

Subpart D-May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?
99.31 Under what conditions is prior consent not required to disclose information?
99.32 What recordkeeping requirements exist concerning requests and disclosures?
99.33 What limitations apply to the redisclosure of information?
99.34 What conditions apply to disclosure of information to other educational agencies or institutions?
99.35 What conditions apply to disclosure of information for Federal or State program purposes?
99.36 What conditions apply to disclosure of information in health and safety emergencies?
99.37 What conditions apply to disclosing directory information?

Subpart E-What are the Enforcement Procedures?

99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?
99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?
99.62 What information must an educational agency or institution submit to the Office?
99.63 Where are complaints filed?
99.64 What is the complaint procedure?
99.65 What is the content of the notice of complaint issued by the Office?
99.66 What are the responsibilities of the Office in the enforcement process?
99.67 How does the Secretary enforce decisions?

Authority: Sec. 438, Pub. L. 90-247, Title IV as amended. 88 Stat. 571-574 (20 U.S.C 1232g), unless otherwise noted.

Subpart A-General

99.1 To which educational agencies or institutions do these regulations apply?

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that—

(1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

(b) The following chart [see below] lists the funded programs to which Part 99 does not apply as of April 11, 1988:

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or (2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program, (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 CFR 300.560-300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of Handicapped Act.)

99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to—(a) Attendance in person or by correspondence; and (b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) The term means those records that are—(1) Directly related to a student; and

Name of program	Authorizing statute	Implementing regs
1. High School Equivalency Program and College Assistance Migrant Program	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research.	The Rehabilitation Act of 1973, as amended. (29 U.S.C. 700, et seq.)	Parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children	Immigration and Nationality Act, as amended. (29 U.S.C. 700, et seq.)	Part 538.
4. College Housing	Title IV of the Housing Act of 1950, as amended. (12 U.S.C. 1749, et seq.)	Part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program, Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act.	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Parts 700, 706-708.

Note: The secretary, as appropriate, updates the information in this chart and informs the public.

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include—

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are—

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that—

(A) Are made and maintained in the normal course of business; (B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are—

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to—

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or any official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student," except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6)

99.4 What are the rights of parents?

An educational agency or institution shall give full right under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

99.5 What are the rights of eligible students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of parents under this part transfer from the parents to the student,

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents,

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part.

The policy must include—

(1) How the agency or institution informs parents and students of their rights, in accord with 99.7;

(2) How a parent or eligible student may inspect and review education records under 99.10, including at least—

(i) The procedure the parent or eligible student must follow to inspect and review the records:

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies, and

(IV) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in 99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under 99.1(a)(1), and, if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maintained as required by 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under 99.20, to obtain a hearing under 99.21(a), and to add a statement to the record under 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Authority: 20 U.S.C. 1232g(e) and (f))

(Approved by the Office of Management and Budget under control number 1880-0508)

99.7 What must an educational agency or institution include in its manual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to—

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e))

(Approved by the Office of Management and Budget under control number 1880-0508)

Subpart B-What are the Rights of Inspection and Review of Education Records?

99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the definition of "Education records" in 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, and educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are—

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if—

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's-

(A) Admission to an educational institution:

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if-

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall—

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1)(A) and (B))

Subpart C-What are the Procedures for Amending Education Records?

99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) if the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall-

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall—

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or other-

wise in violation of the privacy or other rights of the student, it shall—

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall—

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decisions.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D-May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

(a) Except as provided in 99.31 an educational agency or institution shall obtain a signed and dated written consent of a parent or an eligible student before it discloses personally identifiable information from the student's education records.

(b) The written consent must—

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section—

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g(b)(1) and (b)(2)(A))

99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirement of 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of 99.35, to authorize representatives of—

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to—

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974 specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type or State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to—

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information" under the conditions described in 99.37

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) of this section.

(Authority: 20 U.S.C. 1232g (a)(5)(A), (b)(1) and (b)(2)(B))

99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include—

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under 99.33(b), the record of the disclosure required under this section must include—

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in 99.31 (a)(1) and (3) for the purposes of auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragraph (a) of this section does not apply if the request was from, or the disclosure was to—

(1) The parent or eligible student;

(2) A school official under 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

(Approved by the Office of Management and Budget under control number 1880-0508)

99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if-

(1) The disclosures meet the requirements of 99.31; and

(2) The educational agency or institution has complied with the requirements of 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under 99.31(a)(11) or to disclosures to a parent or student under 99.31(a)(12).

(d) Except for disclosures under 99.31(a)(11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education ecord under 99.31(a)(2) shall—

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless—

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if—

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must-

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if—

(1) The parent or eligible student has given written consent for the disclosure under 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health of safety or the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C 1232g(b)(1)(I)

99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of—

(1) The types of personally identifiable information that the agency or institution has designated as directory information:

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C 1232g(a)(5)(A) and (B))

Subpart E-What are the Enforcement Procedures?

99.60 What function has the Secretary delegated to the Office and to the Education Appeal Board?

(a) For the purposes of this subpart, "Office" means the Family Policy and Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to—

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

(Authority: 20 U.S.C. 1232g(f) and (g), 1234)

99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g(f) and (g))

99.63 Where are complaints filed?

A person may file a written complaint with the office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1232g(g))

99.64 What is the complaint procedure?

(a) A complaint filed under 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(Authority: 20 U.S.C. 1232g(f))

99.65 What is the content of the notice of complaint issued by the Office?

(a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(b) The notice to the agency or institution under paragraph (a) of this section—

(1) Includes the substance of the alleged violation; and

(2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint.

(Authority: 20 U.S.C. 1232g(g))

99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under 99.66(c), the Secretary may take an action authorized under 34 CFR Part 78, including—

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued.

(b) If, after an investigation under 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complainant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(g))

(Note: The following appendix will not appear in the Code of Federal Regulations.)

Appendix- Analysis of Comments and Changes

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Two issues were raised that cannot be addressed under any specific section of the regulations. In one case commenters raised the issue in the context of different sections of the regulations; in the other case the issues concerned a section that was removed from the regulations. The following is a discussion of those two issues:

- *Release of records from another agency or institution.*

Comment: Several commenters believed an agency or institution should not be required to provide a student a copy of a transcript or other records from another agency or institution unless the originating agency or institutions no longer in existence. Other commenters believed language should be included that would permit an educational agency or institution to decline a request for disclosure of a student's transcript or other records from another agency or institution, unless the originating agency or institution is no longer in existence.

Discussion: The records in question fall within the definition of education records in that they are directly related to a student and are maintained by an educational agency or institution. An agency or institution is required to provide a parent or an eligible student access to all records, including those transcripts and records it did not originate but that it maintains. This requirement is set forth in the section entitled, "What rights exist for a parent or eligible student to inspect and review education records?" The FERPA does not forbid or require an agency or institution to disclose records to a third party, nor would it prevent an agency or institution from establishing a policy of not disclosing to third parties records that had originated at another agency or institution.

Change: None

- *Waiver of Rights*

Comment: One commenter expressed concern about the removal of the section which set forth the conditions under which a parent or a student could waive any or all of his or her rights under the Act. While not endorsing nonstatutory waivers, the commenter believed that if nonstatutory waivers will continue to be recognized, the conditions governing those waivers are necessary in order to protect against any possible abuse. A second commenter supported the deletion of the general waiver provision, stating that there is no authority for waivers beyond the very narrow ones set forth in the statute.

Discussion: There was no statutory requirement for the waiver provision that was included in the regulations or the conditions under which nonstatutory waivers could be permitted. Therefore, the section was removed. However, in removing it, the Secretary does not intend to preclude educational agencies and institutions from establishing policies and conditions under which parents or students would be allowed to execute nonstatutory waivers.

Change: None.

The Secretary's discussion of the other comments received on the NPRM follows:

Section 99.1 To which educational agencies or institutions do these regulations apply?

Comment: One commenter questioned the specific legislative authority exempting programs from this part and the effect of exempting the programs.

Discussion: The statute appears in Part C of the General Education Provisions Act (GEPA). Prior to the establishment of the Department, Part C applied only to programs administered by the Commissioner of Education. The Commissioner had no authority over programs administered by the Assistant Secretary of Education and the Director of the National Institute of Education. For programs that were transferred to the Department under the Department of Education Organization Act (DEOA), the provision of Part C continued to apply only to those programs administered by the Commissioner on the day preceding the effective date of the DEOA. Thus, FERPA does not apply to former National Institute of Education programs and the former National Center for Educational Statistics, Rehabilitation Services, National Institute of Disability and Rehabilitation Research, College Housing, and the Transition Program for Refugee Children.

Change: None.

Section 99.3 What definitions apply to these regulations?

Definition of "Directory Information"

Comment: Several commenters objected to the standard proposed in the definition of "directory information," stating there is no authority to broaden the term to include other information beyond that identified by Congress. Others stated that what may be considered an invasion of privacy by one person may not be so considered by another, which could result in inconsistency.

In contrast, an equal number of commenters stated that the standard is "most helpful", a "notable improvement" and "should be incorporated in the regulations." One commenter asked that distinguished academic performance or public service be included.

One commenter asked how the standard was developed. Others seemed to believe the standard would replace the items that have been designated by statute.

Discussion: The statute states that "directory information relating to a student includes the following ..." and then lists items which may be considered directory information. The Department had interpreted the word "includes" to mean the list was not prescriptive. To clarify that interpretation, the phrase "... and other similar information" was added to the definition in the regulations published in 1976.

The Secretary, in revising the regulations, decided it would be preferable to establish a standard for interpreting the scope of the legislation. The standard, together with the list of items, should provide sufficient guidance for educational agencies and institutions. The standard would permit an agency or institution to mention distinguished academic performance or public service as long as it had designated that information as directory information and the parent or student had not objected to such a disclosure.

Change: None.

Section 99.3 Definition of "Education Records"

Comment: A commenter believed the regulations are unclear on whether the definition of education records includes or excludes records relating to an individual in attendance at an educational agency or institution who is also employed as a result of his or her status as a "student."

Discussion: All records relating to a student who is also an employee of an educational agency or institution are included in the definition of education records if the student's employment is contingent on the fact that he or she is a student. For example, all records, including employment records, of a student who, because he or she is a student, is employed by the educational agency or institution to serve as a teaching assistant, lecturer, or in some other capacity, are education records. Excluded from the definition of education records are the employment records of an employee-including, for example, a teaching assistant or lecturer-whose employment did not result from and does not depend on the fact that he or she may also be a student at the agency or institution, provided that these employment records are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose.

Change: The definition has been rewritten for clarity.

Comment: One commenter believed that personally identifiable information relating to events or matters that transpire after the student is no longer in attendance should be covered by the definition of education records. The commenter was concerned that the exclusion of this information from the definition is without statutory authority that it would allow an educational agency or institution to collect negative allegations or information on a former student, and that the parent or student would have no protection against release of the information to third parties.

Discussion: The exclusion is intended to allow educational agencies and institutions and their alumni organizations to perform their traditional functions of fundraising and publishing information concerning the accomplishments of alumni. Most, if not all, alumni organizations perform these functions in contact with the former students. Since the collection and use of negative information about alumni is not an accepted or usual practice of educational agencies or institutions, the Secretary has decided that any expectation of abuse is minimal and would be insufficient to justify imposing an additional regulatory burden.

Change: None.

Section 99.3 Definition of "Parent"

Comment: One commenter believed the definition of "parent" should specifically state that a school district must provide rights to both natural parents, custodial and noncustodial. Another commenter believed that the new section "What are the rights of parents?" should specifically state that "noncustodial" parents are included in the Act's coverage. The commenters believed the proposed additions would further clarify the rights of noncustodial parents.

Discussion: In revising the regulations the Secretary recognized the need to clarify the rights of custodial and noncustodial parents. Therefore, the new section was added to state specifically that the agency or institution shall give full rights under the law to either parent unless the agency or institution has been provided with evidence that there is a court order, State statue, or legally binding document relating to such matters as divorce, separation, or custody, that specifically revokes these rights. The Secretary believes this new section provides sufficient clarification and that the definition of "parent" should remain as it appeared in the proposed regulations.

Change: None.

Section 99.3 Definition of "Student"

Comment: One commenter stated that the inclusion of "former student" in the definition of "student" improves the definition. Two other commenters appeared to believe that the purpose of the revision was to extend the law's coverage to include former students.

Discussion: Former students are covered under the statute's definition of student and have been entitled to the same rights as students in attendance since the law's passage. The intent of the revision is to make this clear in the definition section of the regulations. Those specific provisions of the regulations where rights are limited to current students are clearly stated in the revised regulations. See 99.7 regarding annual notification, 99.34 regarding disclosure to other educational agencies and institutions and 99.37 regarding directory information.

Change: None.

Section 99.5 What are the rights of eligible students?

Comment: Two commenters believed the paragraph that was removed from this section, which is entitled "Student Rights" in the current regulations, should be reinserted. The paragraph stated that the rights of an eligible student are not affected by a provision in the regulations that allows an agency or institution to disclose information to the parents of such a student without the student's written consent. One of these commenters believed the reference should be reinserted in order to make clear the fact that the student's right to have access to his or her education records is not affected by the student's status as a dependent. The other commenter believed the removal of the reference may result in increased pressure on institutions to grant a parent's request for access without formally establishing that the student is in fact a dependent as defined in section 152 of the Internal Revenue Code.

Discussion: This section of the regulations clearly states that when a student becomes an eligible student, all of the FERPA rights transfer from the parents to the student. The section of the regulations entitled "Under what conditions is prior consent not required to disclose information?" provides that an agency or institution may disclose information to the parents of a dependent student without the student's consent; the provision does not require the school to do so. The paragraph that is being removed was not intended to have any effect on an agency's or institution's decision on whether to grant the parent's request for information. Nor was it intended to affect an agency's or institution's policies in establishing that a student is a dependent as defined in section 152 of the Internal Revenue Code.

Change: None.

Comment: Three commenters believed educational agencies and institutions should be required to allow the parents of dependent students to inspect and review the education records of the student. Another commenter believed that even allowing educational agencies and institutions to afford the parents the opportunity to have access undermined the intent of the law by removing the student's right to have control over the disclosure. This commenter believed that specific procedures for release of information to parents in specific circumstances were needed.

Discussion: The statute clearly provides that the parents' rights afforded by the law transfer to the student when the student reaches age 18 or is attending an institution of postsecondary education. The statute also clearly provides that an educational agency may disclose the education records of a dependent student to the parents of the student without the student's consent. The Secretary has no authority to change these statutory provisions. He finds nothing in the statute to indicate that Congress intended the Department to develop procedures such as the one commenter suggested and believes that to do so would impose an unnecessary regulatory burden.

Change: None.

Comment: A commenter believed the regulations should clarify the status of handicapped students over the age of 18 whose handicapping condition is such as to affect their ability to understand and/or exercise their rights under the Act.

Discussion: The Secretary has carefully considered this question in light of the fact that at age 18 the rights transfer from the parent to the student. He has decided that a student who is so severely handicapped as to prevent the student from exercising his or her rights under the Act would in most cases be under the legal care or guardianship of another person or entity. In the absence of a court's order of guardianship, the Secretary believes it would be reasonable to presume that the parents of such a student are the persons who are in the best position to act on behalf of the student. Therefore, the Secretary has decided that no specific provision in the regulations is necessary.

Change: None.

Comment: One commenter was concerned about the statement in the proposed regulations that provides that an individual does not have rights in components of an "agency or institution at which the individual has never been in attendance." The commenter questioned whether a student who is enrolled in one component of a university and takes one course in another component is considered to be a student in attendance at, and with rights in both components. The commenter believed the provision could result in the disclosure of records by a component of the institution in which the student has never been in attendance.

Discussion: In revising the regulations, two significant phrases were unintentionally omitted from the statement. The statement should have read, "If an individual is or has been in attendance as one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission but has never been in attendance." Concerning the commenter's specific question, if an individual applied for but was not admitted to a component, the individual would have no rights with regard to his or her application for admission to that component. This result is consistent with extensive legislative history on the subject. However, if an individual took a course in the component to which he or she had been denied admission, that individual would have FERPA rights with respect to that course, but still would not have rights with respect to the denied application for admission to that component.

Change: The phrases "is or has been in attendance at" and "to which the individual has applied for admission" have been added.

Comment: A commenter was concerned that an institution might misinterpret the language in this provision to mean that a student would not have rights with respect to records which happen to be maintained in a component other than the component in which the student is enrolled.

Discussion: A student cannot be denied access or other rights with respect to his or her education records regardless of location.

Change: None.

Comment: A commenter suggested that the words "his or her parent" in this section be changed to "the parents" and the words "parents of students" be changed to "parents."

Discussion: In revising the regulations, the Secretary changed the definition of "parent" to eliminate the need to refer to "the parent of the student" or "his or her parent" throughout the regulations. The need for changing the terminology in this section was overlooked.

Change: The terminology has been revised to read "parents."

Section 99.6 What information must an educational agency's or institution's policy contain?

Comment: One commenter believed an educational agency or institution should be required to include in its policy a statement that grades may not be appealed.

Discussion: The legislative history of FERPA indicates that the Act was not intended to be used to replace previously established procedures to appeal the grade given the student's performance in a course. However, given the discretion delegated to educational agencies or institutions in implementing FERPA, an agency or institution might choose to permit parents of students or eligible students to use FERPA procedures to challenge a grade. Therefore, the Secretary has decided that it is not necessary or appropriate to require educational agencies and institutions to state in their policies that a student's grade may not be appealed.

Change: None.

Comment: Another commenter expressed agreement with the revisions made in this section with regard to the written policy each educational agency or institution had to publish its policy as part of its annual notification and that this requirement was being removed in revising the regulations.

Discussion: The only revisions made in this section, which was previously numbered 99.5, were made for the purpose of clarification. Neither the current nor the revised regulations require that an educational agency or institution include its policy in the annual notification. Both regulations require that the annual notification include a statement of where the policy may be obtained.

Change: None.

Section 99.7 What must an educational agency or institution include in its annual notification?

Comment: One commenter believed the intent of the law is that educational agencies and institutions be required to "make notification available" to parents or students rather than to "notify" parents or students. Therefore, the commenter suggested that the word "notify" in the first paragraph of the section be replaced by the words "make notification available."

Discussion: The statute requires educational agencies and institutions to inform the parents or the eligible students of the rights accorded them by the Act. In order to inform the parents or the eligible students of their rights, educational agencies and institutions would be required to notify, not simply make notification available.

Change: None.

Comment: One commenter pointed out that the revised regulations would require educational agencies and institutions to notify parents of students in attendance "and" eligible students in attendance whereas the former regulations required that parents "or" students be notified.

Discussion: The use of the word "or" can connote the idea that an educational agency or institution has an option either to notify parents of all students—whether the students are eligible or not—or to notify only eligible students. Conversely, use of "and" could be construed to require disclosure to eligible students and all parents, whether or not they were the parents of noneligible students. The word "and" is used in this section with the understanding that in the phrase "parents and eligible students" the word "parents" means the parents of students who are not eligible students. Thus, the requirements in question apply both to eligible students and to parents of students who are not eligible students.

Change: None.

Comment: One commenter, writing on behalf of an institution of higher education, believed language should be inserted to relieve notification requirements with respect to parents who reside outside the continental United States. The commenter also believed agencies and institutions should not be required to notify parents of students who have a primary or home language other than English if the student has demonstrated the minimal command of the English language required for admission to the institution.

Discussion: The statute requires that educational agencies or institutions inform the parents or students of their rights. It does not, however, require that the parents or students be notified individually; a general notification, such as by publication in a newsletter or college bulletin, is adequate. The requirement that an agency or institution notify parents of students who have a primary or home language other than English applies only to elementary and secondary schools. Institutions of higher education are not required to inform parents of rights, just eligible students.

Change: None.

Comment: One commenter asked for information on how educational agencies and institutions are to notify former students of their rights and the agency's or institution's policies.

Discussion: Both the current regulations and the revised regulations provide that notification must be given only to parents of students in attendance or eligible students in attendance. The notification of rights and policy need not be provided to former students or their parents. In any case, as noted in the discussion of the preceding comment, a general notification by publication in a newsletter college bulletin is adequate to satisfy the statutory and regulatory requirements.

Change: None.

Section 99.10 What rights exist for a parent or eligible student to inspect and review education records?

Comment: A commenter believed there was a need to clarify the requirement that an educational agency or institution comply with a request for access to records within "a reasonable period of time, but in no case more than 45 days after it has received the request." The commenter indicated that the regulations should emphasize that it is quite often reasonable to provide access within a shorter period of time than the 45-day limit.

Discussion: The Secretary finds that, in practice, schools often provide access within a period of time which is considerably shorter than the 45-day limit. He has decided that the phrase "but in no case more than 45 days" serves to emphasize that 45 days is the maximum time allowed for compliance.

Change: None.

Comments: Two commenters were of the opinion that parents should be entitled to obtain copies of the education records of their children. Both commenters indicated that having copies of the records would provide protection against a school's losing or misplacing records. One of the commenters believed the provision would be particularly beneficial for families who move to a new location, in the event the education records are misplaced or lost in transit or in the event transfer of the records is delayed. The other commenter believed such a provision would also relieve schools of the necessity of determining when a denial of copies would effectively result in a denial of access.

Discussion: Both the current and the revised regulations set forth conditions which apply to the disclosure of information to other educational agencies and institutions in which a student seeks or intends to enroll. One of the conditions is that an agency or institution which transfers records to another agency or institution must give the parent or eligible student, upon request, a copy of the record that was disclosed. This is required by statute.

The second case in which an educational agency or institution must provide copies is when a parent or student gives a written consent for the disclosure of information from the student's education records and requests a copy of the records disclosed. This is also a statutory requirement.

The current and the revised regulations also require an educational agency or institution to provide copies of education records if a failure to do so would effectively result in a denial of access, and to include in their written policy a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of education records. These requirements, while not specifically stated in the statute, are necessary to implement the statutory requirement that an educational agency or institution shall not have a policy of denying, or effectively preventing, a parent or student the right to inspect and review the education records of the student.

The Secretary has decided that it would impose an unnecessary burden to require educational agencies or institutions to provide copies except as is now required by statute and the implementing regulations. However, nothing in the statute or the regulations would preclude an educational agency or institution from adopting a policy of providing copies in other cases, if it so chooses.

Change: None.

Comments: Two commenters believed the provision that prohibits educational agencies and institutions from destroying records if there is a pending request for access should be expanded. Both commenters believed educational agencies and institutions should be required to notify parents prior to destruction of documents and afford them an opportunity to inspect and review or obtain the records.

Discussion: The Secretary had decided that such a requirement would impose an unnecessary burden on educational agencies and institutions. In many cases, State law or agency or institutional policies and procedures prescribe a period of time in which education records are required to be maintained. Nothing in the Act or these regulations would preclude an educational agency or institution from implementing a policy of notifying parents or eligible students prior to the destruction of any education records.

Change: None.

Comments: One commenter expressed concern about the provision that accords an eligible student the right to have his or her medical treatment records reviewed by a physician or other appropriate professional of the student's choice. The commenter questioned whether postsecondary institutions would be obligated to verify the credentials of the professional chosen by the student.

Discussion: This provision is based on a requirement in the statute. The provision describes the rights of inspection and review of education records in the revised regulations. Neither the statute nor the regulations prescribe any procedures for verification.

Change: None.

Comments: One commenter believed that a provision in this section lends support to parents who claim they should have the right to have access as long as they are supporting the student in college. The provision in question reads, "...each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student." It is the phrase "parent or eligible student" that the commenter believed lends support to the parent's claim.

Discussion: Two word "parent" in the phrase "parent or eligible student" means the parent of a student who is not an eligible student. Thus, at the college level, FERPA affords the eligible student the right of inspection and review. FERPA does not, however, prohibit an educational agency or institution from disclosing the education records of an eligible student to the parents of the eligible student if the student is a dependent child as defined in section 152 of the Internal Revenue Code of 1954. The provision which allows educational agencies and institutions to disclose information to parents of eligible students is set forth in the section entitled, "Under what conditions is prior consent not required to disclose information?"

Change: None.

Section 99.11 May an educational agency or institution charge a fee for copies of education records?

Comments: One commenter believed fees for copying should be limited to the actual cost of reproduction. The commenter believed that unless fees are limited to the actual cost of copying, an educational agency or institution might incorporate into the fee costs for search and retrieval of education records. A second commenter indicated that an educational agency or institution should be allowed to charge a fee for search and retrieval, if done manually, and for any other costs incurred in providing copies.

Discussion: Educational agencies and institutions are entitled to charge reasonable fees for the actual cost of reproduction, secretarial time, and postage. The Secretary considered whether to include a provision to allow educational agencies and institutions to charge a fee for search and retrieval. He decided that providing parents or students access to education records is a function that is generally a part of the accepted and normal business of educational agencies and institutions.

Change: None.

Section 99.12 What limitations exist on the right to inspect and review records?

Comment: One commenter was concerned about the removal of the provision that required educational agencies and institutions to document the confidentiality of letters and statements of recommendation that were placed in the education records of a student prior to January 1, 1975. The commenter believed that the requirement provided the only reliable way of determining that a letter or statement was indeed "confidential."

Discussion: The provision was removed because it placed an undue burden on agencies and institutions to expect that they would be able to document the confidentiality of letters or statements that were solicited or sent and retained more that 10 years ago.

Change: None.

Comment: A commenter raised a question relating to the provision that an educational agency or institution cannot require a waiver as a condition for admission to or receipt of a service or benefit from the agency or institution. With that in mind, the commenter asked whether a placement office would be denying a service or benefit to a student by advising the student that a professor will not write a letter of recommendation or an employer will not accept a letter of recommendation, or both, unless the student signs a waiver.

Discussion: A faculty members's refusal to write a reference without a waiver would be considered an action of that individual and not of the agency or institution. A placement office would not be denying a service or benefit by advising the student of the faculty member's or employer's refusal.

Change: None.

Comment: One commenter believe the provision in this section that allows an applicant for admission to waive his or her rights under certain conditions should be removed.

Discussion: The provision is required by statute. Therefore, the Secretary has no authority to remove it from the regulations.

Change: None.

Section 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

Comments: Two commenters believed that a parent or student should have the option of inserting a statement in an education record without first going through the hearing process that is provided in this section. The commenters interpreted the statute as intending that an educational agency or institution must provide a parent or a student both an opportunity for a hearing and an opportunity to insert a statement in the record. They believed the regulations misapply the statute's intent by requiring that a parent or student go through the hearing process before exercising the right to place a statement in the record. One of the commenters stated that this requirement can result in extensive delay in cases where a parent's or student's interest in inserting a clarifying statement in the record is time-sensitive.

Discussion: The statute provides that the parents or students must be afforded "an opportunity for a hearing . . . to challenge the content of (the) records and to provide an opportunity for the correction or deletion of [data] and to insert into [the] records a written explanation . . . respecting the content of [the disputed] records." The Secretary has no authority to require that the statement be limited to a declaration of disagreement.

Change: None.

Comment: One commenter suggested an amendment of the provision which requires that an educational agency or institution disclosed a parent's or a student's explanatory statement whenever it discloses the portion of the record to which the statement relates. The commenter believed that educational agencies or institutions with complex or automated recordkeeping systems should not be required to provide a copy of the explanatory statement along with a disclosure. Instead, the commenter believed agencies or institutions should be allowed to include on the disclosed record a reference to the fact that the explanatory statement exists and will be made available on request.

Discussion: The statute requires that the statement be maintained with the record. The Secretary believes the regulatory requirement that the statement be disclosed whenever the contested record is disclosed is necessary to meet the statutory intent.

Change: None.

Section 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclosed information?

Comment: One commenter believed that it seemed inappropriate to require that a student's written consent state the purpose of the release. The commenter seemed to believe that the written consent is intended to be a mechanism to restrict what he assumes is a student's right to have information released from his or her own education records. In interpreting the provision in this way, the commenter believed that requiring the student to state the purpose of the release limited his right to have the records released.

Discussion: The statute requires that the purpose of the release be stated in the written consent; therefore, the Secretary has no authority to remove the provision. The purpose of the written consent is to document that the student consented to a disclosure of information from his or her education records; the consent is not intended in any way to restrict any of a student's rights.

Change: None.

Comment: Another commenter indicated that educational agencies and institutions should be able to accept requests by telephone with proper safeguards.

Discussion: The commenter did not specify whether he or she was referring to requests made by a third party for disclosure of information from a student's education records or a request made by a parent or eligible student to disclose information to a third party. Concerning the former, the regulations do not require that a request be in writing in order for an agency or institution to disclose information pursuant to one of the statutory exclusions permitting disclosure without consent. Concerning the latter, the statute requires an agency or institution to obtain written consent of a parent or eligible student before disclosing information to a third party.

Change: None.

Section 99.31 Under what conditions is prior consent not required to disclose information?

Comment: A commenter believed the term "legitimate educational interest" should be more definitive. The commenter indicated that some institutions interpret the term too broadly while others interpret it too narrowly.

Discussion: The Secretary believes the Department could not make a definitive statement of legitimate educational interest that would apply to each school district and college and university across the nation. Each educational agency and institution must establish its own criteria, according to its own procedures and requirements, for determining when its school officials have a legitimate educational interest in a student's records.

Change: None.

Comment: Two commenters disagreed with the proposal to add language to clarify that education records may be disclosed without consent to a postsecondary institution in which a student seeks or intends to enroll. The commenters believed the addition expanded the scope of the statute and that the statutory purpose of the provision was to facilitate the transfer of records when a student moves from one public school system to another. In the case of postsecondary institutions, the commenters believed it would be more appropriate to require consent of the parent or the student before transferring records.

Discussion: The current regulations did not clearly specify that postsecondary educational institutions are covered by the exception. The provision has been applicable in practice to postsecondary institutions since enactment of the law. The change to this provision clarifies that "schools" include institutions of postsecondary education.

Change: None.

Comment: A commenter asked that the definition of "financial aid" be explicitly broadened to include all debts owed to an institution as a result of the student's participation in the institution's programs. The commenter strongly believed that Congress did not intend that an institution should be restricted by the law from collecting any and all debts owed it by students.

Discussion: The statute was intended to provide parents or students some control over the disclosure of information from the student's education records. With certain specified exceptions, including the provision with regard to financial aid, information cannot be disclosed without a student's written consent. The statute refers to disclosure "in connection with a student's application for, or receipt of, financial aid." In that context, the definition of financial aid could not be broadened to include other debts owed the institution.

Change: None.

Comment: One commenter, a representative of a State Department of Education, believed a provision should be included to acknowledge that State law may in some cases be more protective of students' privacy than Federal law, particularly in restricting the conditions under which information can be disclosed without the parent's written consent.

Discussion: The current and revised regulations provide that a State is not prevented from further limiting the number or type of State or local officials to whom disclosures may be made without consent. The regulations also state under the section "What are the rights of eligible students?" that the law and regulations "do not prevent educational agencies or institutions from giving students rights in addition to those given to parents of students." The Secretary has decided that no regulatory purpose would be served by including a provision such as suggested by the commenter.

Change: None.

Comment: A commenter suggested a change in the provision that allows disclosure "to organizations conducting studies for, or on behalf of, educational agencies or institutions [if] the study is conducted in a manner that does not permit personal identification of parents of students by individuals other than representatives of the organization. . . ." The commenter believed the word "by" should be changed to "to".

Discussion: The word "by" is used in the statute, and the Secretary believes the meaning is clear.

Change: None.

Comment: None.

Discussion: In the notice of proposed rulemaking (NPRM) for these regulations the phrase "parents or students" was used in 99.31 (a)(6)(ii)(A). However, the statute requires organizations that receive information under this exception to the consent requirement to protect the information "in such a manner as will not permit the personal identification of students and their parents. . . ."

Change: The word "or" has been changed to "and" to ensure that both groups are fully protected.

Comment: A commenter believed the educational agency or institution should be relieved in some cases of the requirement of making a reasonable effort to notify a parent or student in advance of compliance with a subpoena. The commenter indicated that in legal actions to which the student is a party, the court process itself requires that any subpoena be served on the opposing party, thereby making any notification effort by the educational agency or institution superfluous.

Discussion: The statutory language requires that parents or students be notified of "all such orders or subpoenas" in advance of compliance. The language was modified in the course of promulgating the current regulations to require that the agency or institution "make a reasonable effort to notify. . . ." The modification was made in recognition that it would be difficult in many cases for the agency or institution to comply with the statutory requirement and in the belief that the modification was in accord with the Congressional intent.

The Secretary has decided that he has no authority to relieve educational agencies or institutions of the statutory requirement that parents and students be notified of "all such orders or subpoenas." The Secretary has also decided that even in cases where the parent or student brings the action, the notification serves to assure that the party serving a subpoena is in fact acting on behalf of the parent or student.

Change: None.

Comment: One commenter suggested that a condition be added to allow a postsecondary institution to contact a parent of an eligible student without the student's consent if the institution suspects that the student has a physical or emotional problem of which the university believes the parent may be unaware and that affects the student's academic or campus life.

Discussion: The Secretary has no authority to regulate an exception to the statutory requirement that at age 18 the rights afforded by FERPA transfer from the parent to the student. However, if an institution determined that the circumstances of a situation were such as to constitute a health or safety emergency and if the university decided that the parent is the party who is in the best position to deal with the emergency, then the disclosure could be made under the section of the regulations that provides for disclosure in those emergencies.

Change: None.

Comment: Four commenters believed a condition should be added to permit disclosure without a student's consent if the agency or institution has reason to believe that the student has provided inaccurate or misleading information concerning his or her academic record to another educational agency or institution, to an employer, to a professional association, or to a governmental agency to whom the student applies for benefits or services.

Another commenter believed educational agencies and institutions should be allowed to disclose information without prior written consent to government officials, including U.S. Senators and Representatives, State legislators, and governors, who have been contacted by a parent or student who believes his or her rights under this law have been violated. The commenter indicated that the agencies or institutions are unable to respond to, or to defend themselves against, the parent's or student's allegations because they cannot release information to the government officials without the parent's or student's written consent.

Discussion: The Secretary understands the concerns of the commenters and has carefully considered whether provisions could be included in the regulations to address the problems. He has decided that the statute is specific in stating the conditions under which disclosure can be made without consent and that he has no authority to include the provisions proposed by the commenters.

Change: None.

Section 99.32 What recordkeeping requirements exist concerning requests and disclosures?

Comment: A commenter suggested that the term "list" be changed to "record" in this section. The commenter indicated that as long as a record of requests for and disclosures of information is maintained, the form of the record is irrelevant.

Discussion: The Secretary did not intend to prescribe the form of the record: the intent was to suggest a convenient way to maintain the information. However, in order to conform to the statutory language, the term "record" will be used.

Change: The term "record" has been substituted for "list."

Comment: One commenter stated that keeping a record of requests for disclosure is impractical and implies that a record must be kept even for requests that are denied. The commenter also believed it impractical to require the record of disclosure to be kept with the education records of the student, inasmuch as most institutions maintain records in computerized formats. Another commenter believed maintaining a record of disclosures without consent is self-incriminating. The commenter also stated that institutions should be free to establish their own retention schedule.

Discussion: The student requires each educational agency and institution to maintain a record, kept with the education records of each student, that will indicate all parties who have requested or obtained access to a student's education records, including those parties to whom the statute permits disclosure without consent. While the statute states that the record should be kept with the education records of a student, it does not intend to require the agency or institution to keep it in one file or in one location. However, it does intend to require the agency or institution to make the record available to a parent or student as part of the parent's or student's general access to the education records. Since parents or students should be able to learn of those parties interested in the records, the record of disclosure should be maintained as long as the agency or institution maintains records on the student.

Change: None.

Comment: A commenter asked whether the placement office of an educational agency or institution would be required to keep a list (record) of all parties to whom a student's credential files were sent if the student had given a blanket consent to release his or her education records without specifying the individual parties.

Discussion: The statutory and regulatory language requires an agency or institution to maintain a record of each disclosure.

Change: None.

Comment: One commenter questioned the recordkeeping requirement concerning disclosure and redisclosure of information to parties if prior written consent for disclosure is not required. An educational agency or institution may disclose information to a party if consent is not required with the understanding that that party may redisclose the information to another party to whom information can be disclosed without consent. The agency or institution must keep a record of the parties to whom the disclosure and redisclosures are made and the legitimate educational interests all parties have in the records. The commenter believed the recordkeeping requirement places an undue burden on institutions and that most reasonable approach is to assert that no information may be redisclosed.

Discussion: The Secretary did not intend any change in the recordkeeping requirement. At the time the final regulations were issued in 1976, the Department had considered whether student consent should be required if disclosure by a party excepted from the consent requirement is to another party excepted from the consent requirement—even though the institution could disclose information without consent to either excepted party. The Secretary considered, for example, whether an institution that disclosed information to the Department of Education under the Guaranteed Student Loan Program as permitted by the "financial aid" exception, would be required to tell the Department of Education not to make a future disclosure of that information to the bank that loaned the money under the program—even though the bank could obtain the information directly from the institution under the same exception.

If the Department of Education could disclose the information freely to other excepted parties, there would be no harm done to the consent requirement. However, the student would no longer have a means to discover all of the parties outside the institution who had had access to his or her records without consent. To remedy this problem, the Secretary authorized an institution to disclose information to excepted parties with the understanding it would be redisclosed to other excepted parties, but only if a record of access were kept for all of those parties.

The Secretary did not intend to impose a recordkeeping burden on educational institutions. Rather, the intent was to give a better understanding of the disclosure and recordkeeping requirement with regard to excepted parties.

Section 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

Comment: A commenter believed an example should be inserted in this section to specify that the phrase "is enrolled in or receives service from the other agency or institution" encompasses consortia, cross-enrollment, joint-enrollment, work-study, and coordination of such programs among postsecondary institutions and participating agencies and institutions.

Discussion: The Secretary believes the provision, as it now stands, can clearly be construed to encompass the examples included in the comment.

Change: None.

Comment: None.

Discussion: The proposed regulations changed the definition of student to include former students in order to make clear that most rights accorded students in attendance also apply to former students. In cases where the provisions of a section do not apply to former students, the term "students in attendance" is used. The provision in this section that, in the proposed regulations, stated "an educational agency or institution may disclose an education record of a student to another educational agency or institution if the student is enrolled in or receives services from the other agency or institution" would extend the provision beyond the statutory authority and would indicate that an agency or institution could disclose information on former students without consent to another agency or institution if the former student is enrolled in or receives services from the other agency or institution.

Change: The provision has been clarified to state that it applies only to students in attendance.

Section 99.36 What conditions apply to disclosure of information in health and safety emergencies?

Comments: One commenter believed that the regulations, in stating that the provisions of the section "shall be strictly construed," rightly leaves it to the educational agency or institution to develop its own definition of emergency. The commenter viewed the revision as helpful to educational agencies and institutions and as a step to assure an appropriate recordkeeping process within the institution on defining when an emergency may arise. Another commenter believed the factors that were removed from the health and safety emergency section in revising the regulations should be reinserted. The commenter believed that the statute specifically directs the Secretary to issue regulations concerning disclosure in a health or safety emergency and also believed that the criteria provided useful guidance.

Discussion: The statute, in setting forth the conditions in which personally identifiable information from an education record or records can be disclosed without a parent's or student's consent states that "[such a disclosure may be made], subject to regulations of the Secretary in connection with an emergency, [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons." The regulations required that educational agencies or institutions include four specific criteria in the factors to be taken into account in determining whether personally identifiable information from the education records of a student could be disclosed under the section.

The Secretary based his decision to remove the nonstatutory criteria from the regulations on his belief that educational agencies and institutions are capable of making those determinations without the need for Federal regulation. It is the Secretary's opinion that Congress did not intend to require that regulations be promulgated that would impose burdensome requirements on agencies and institutions. He believes the requirement that agencies and institutions strictly construe the provision fully meets the Congressional intent. Nothing in the statute or legislative history prohibits an agency or institution from considering the four specific criteria that have been removed.

Change: None.

Section 99.37 What conditions apply to disclosing directory information?

Comment: One commenter thought the use of the word "and" in the text of the first paragraph under the section was incorrect.

Discussion: In the proposed regulations the word 'and" was inserted in place of the word "or" in the phrase ". . . parents of students in attendance and eligible students in attendance. . . ." However, replacing the word "or" with the word "and" does not remove all possibility for misinterpreting the provision. As clarification, we note that in the phrase "parents of students in attendance," the word "students" means students who are not eligible students. Thus, the educational agency or institution must notify both all eligible students and the parents of all students who are not eligible students.

Change: None.

Comment: A commenter, a representative of a postsecondary educational institution, believed that the refusal that students are allowed to exercise over the designation of directory information should be limited to the students' address and telephone number. The commenter indicated that the students' right of refusal has in some cases enabled students to commit fraudulent acts with a lessened chance of discovery.

Discussion: The statute provides students the right to refuse to allow the educational agency or institution to designate any or all of the items of information about the directory information.

Change: None.

Section 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

Comment: One commenter believed the Department of Education should give some direction to State schools or institutions that are mandated by State law to allow a student to have access to confidential letters of recommendation to which the student, under FERPA, has waived his or her right of access. The commenter indicated that if placement directors send a credential file that contains confidential letters of recommendation to schools or institutions will return the file on the basis that the confidentiality of the letters cannot be protected.

Discussion: The Secretary is unable to advise State schools or institutions with respect to the laws of each State. With respect to the Federal law, the statute provides that the access rights afforded by the law shall not operate to make letters and statements of recommendation available to students in institutions of postsecondary education who have executed a valid waiver of the right to inspect and review the letters or statements. In implementing the law, the regulations provide that a postsecondary institution "does not have to permit" a student to inspect and review the letters and statements of recommendation provided the student has executed a valid waiver. Under these provisions, an educational agency or institution is not precluded from providing a student access to a letter or statement of recommendation. Therefore, if a State law requires that a State institution afford a student access to letters or statements of recommendation, the Federal law would not interfere, irrespective of whether the student has executed a valid waiver of his or her right.

Change: None.

Section 99.64 What is the complaint procedure?

Comment: A commenter proposed that the intended meaning of the word timely as it appears in the second paragraph of this section should be defined.

Discussion: The Secretary has decided not to include a definition in the regulations for two reasons. First, the word appears only once in the regulations. Secondly, the meaning of the word would depend largely on the circumstances which are peculiar to each case. A complaint might involve complex circumstances and attempts by a complainant to resolve the issue independently that might reasonably have delayed the filing of the complaint. Such a complaint would be considered timely. Another complaint might involve an allegation of a violation that occurred many years ago and was never pursued despite the full knowledge of the student. In this case, the complaint would not be considered timely.

Change: None.

Section 99.67 How does the Secretary enforce decisions?

Comment: A commenter believed the law should be changed to provide that the Secretary may decide to withhold Federal funding under programs in addition to those administered by the Department of Education.

Discussion: The Secretary has no authority to withhold Federal funds under programs in other Federal agencies.

Change: None

[FR Doc. 88-7764 Filed 4-8-88; 8:45 am]

Corrections

Federal Register

Vol. 53, No. 103

Friday, May 27, 1988

DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy

Correction

In rule document 88-7764 beginning on page 11942 in the issue of Monday, April 11, 1988, make the following corrections:

§99.6 [Corrected]

1. On page 11945, in the second column, in 99.6(a)(4), in the fifth line, "99.1(a)(1)" should read "99.31(a)(1)

§99.7 [Corrected]

2. On the same page, in the second column, in the heading for 99.7, "manual" should read "annual".

§99.20 [Corrected]

3. On page 11946, in the second column, in 99.20(b), in the first line, "education" should read "educational".

§99.31 [Corrected]

4. On page 11947, in the first column, in 99.31(a)(3), in the second line, "authorize" should read "authorized".

5. On the same page, in the second column, in 99.31(a)(5)(ii), in the third line, "or State" should read "of State".

§99.36 [Corrected]

6. On page 11948, in the third column, in 99.36(a), in the first and second lines, "of safety or" should read "or safety of".

§99.67 [Corrected]

7. On page 11949, in the second column, in 99.67(b), in the sixth line, "complainant" was misspelled.

8. On page 11950, in the third column, in "Section 99.3", in the second paragraph, in the 11th line, "statue" should read "statute".

9. On page 11953, in the second column, in the sixth indented paragraph, in the first line, "Two " should read "The".

10. On page 11954, in the third column, in the fourth line, "disclosed" should read "disclose".

11. On page 11956, eleven lines from the bottom, "student" should read "statute".

12. On page 11957, in the second column, eleven lines from the bottom, after "the" insert "student as".

Appendix 3

FERPA AND THE CRIME AWARENESS AND CAMPUS SECURITY ACT OF 1990

FERPA Amended to Implement Disclosure Provision of the Campus Awareness and Campus Crime Act

On January 7, 1993, the Department of Education issued final regulations amending the Family Educational Rights and Privacy Act (FERPA) to implement a disclosure provision of the Crime Awareness and Campus Security Act of 1990. "The principal change resulting from these regulations is establishment of another condition under which an institution of postsecondary education may, without prior consent, disclose information from an education record. . . . The change will allow an educational agency or institution to disclose information from a student's education records if the parent or eligible student has provided written consent to the party seeking access to the records, rather than require that the educational agency or institution obtain written consent directly from the parent or eligible student."

Effective February 25, 1993, the amendment to part 99 of title 34 of the Code of Federal Regulations are as follows (taken from ***Federal Register***, Vol. 58, No. 4, Thursday, January 7, 1993):

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880-AA54

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Final Regulations.

PART 99-FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 is revised to read as follows:

(Authority: 20 U.S.C. 1232g, unless otherwise noted.)

2. Section 99.5 is amended by revising the section heading to read as follows:

99.5 What are the rights of students?

****

99.6 [Amended]

3. In 99.6, paragraph (a)(5) is amended by removing "maiintained" [*sic*] and adding, in its place, "maintained."

4. Section 99.30 is amended by revising the section heading and paragraph (a) to read as follows:

99.30 Under what conditions is prior consent required to disclose information?

(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's educational records, except as provided in 99.31.

****

5. Section 99.31 is amended by adding a new paragraph (a)(13), revising paragraph (b), and revising the authority citation to read as follows:

99.31 Under what conditions is prior consent not required to disclose information?

(a) ****

(13) The disclosure is to an alleged victim of any crime of violence, as that term is defined in section 16 of title 18, United States Code, of the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime with respect to that crime.

(b) This section does not forbid an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a)(1) through (11) and (13) of this section.

(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B) and (b)(6))

6. Section 99.60 is amended by revising the heading and paragraphs (a) and (c) to read as follows:

99.60 What functions has the Secretary delegated to the Office and to the Office of Administrative Law Judges?

(a) For the purposes of this subpart, "Office" means the Family Policy Compliance Office, U.S. Department of Education.

****

(c) The Secretary designates the Office of Administrative Law Judges to act as the Review Board required under the Act to enforce the Act with respect to all applicable programs. The term "applicable program" is defined in section 400 of the General Education Provisions Act.

7. Section 99.63 is revised to read as follows:

99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is Family Policy Compliance Office, U.S. Department of Education, Washington, D.C. 20202-4605.

(Authority: 20 U.S.C. 1232g(g))

8. Section 99.64 is amended by adding new paragraphs (c) and (d) to read as follows:

99.64 What is the complaint procedure?

****

(c) A timely complaint is defined as an allegation of a violation of the Act that is submitted to the Office within 180 days of the date of the alleged violation or of the date that the complainant knew or reasonably should have known of the alleged violation.

(d) The Office extends the time limit in this section if the complainant shows that he or she was prevented by circumstances beyond the complainant's control from submitting the matter within the time limit, or for other reasons considered sufficient by the Office.

9. Section 99.65 is revised to read as follows:

99.65 What is the content of the notice of complaint issued by the Office?

(a) The Office notifies the complainant and the educational agency or institution in writing if it initiates an investigation of a complaint under 99.64(b). The notice to the educational agency or institution—(1) Includes the substance of the alleged violation; and

(2) Asks the agency or institution to submit a written response to the complaint.

(b) The Office notifies the complainant if it does not initiate an investigation of a complaint because the complaint fails to meet the requirements of 99.64.

(Authority: 20 U.S.C. 1232g(g))

10. Section 99.67 is amended by revising paragraph (a) and the authority citation to read as follows:

99.67 How does the Secretary enforce decisions?

(a) If the educational agency or institution does not comply during the period of time set under 99.66(c), the Secretary may, in accordance with part E of the General Education Provisions Act—(1) Withhold further payments under any applicable program;

(2) Issue a complaint to compel compliance through a cease-and-desist order; or

(3) Terminate eligibility to receive funding under any applicable program.

(Authority: 20 U.S.C. 1232g(f); 20 U.S.C. 1234)
[FR Doc 93-133 Filed 1-6-93; 8:45 am]

Appendix 4

FERPA AND THE HIGHER EDUCATION AMENDMENTS OF 1992

Notice of Proposed Rulemaking (NPRM) on Excluding Law Enforcement Unit Records from FERPA

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking

SUMMARY: The Secretary requests additional comments on a proposal to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). These amendments are needed to implement a provision of the Higher Education Amendments of 1992, which amended FERPA by excluding from the definition of "education records," and thereby from the restrictions of FERPA, records that are maintained by a law enforcement unit of an educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.

DATES: Comments must be received on or before February 14, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, Family Policy Compliance Office, Office of Human Resources and Administration, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202-4605.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, (202) 732-1807. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Party Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On August 11, 1993, a Notice of Proposed Rulemaking (NPRM) was published in the *Federal Register*. The comment period closed on September 27, 1993. Because the comments received raised certain concerns, the Secretary is requesting additional comments on the proposed rules.

As explained in the previous NPRM, these proposed regulations were required to implement section 1555 of the Higher Education Amendments of 1992, Pub. L. 102-325, codified at 20 U.S.C. 1232g(a)(4)(B)(ii). Under previous law, as reflected in the current FERPA regulations, in order for the records of a law enforcement unit to be excluded from the definition of "education records," certain conditions had to be met. Primarily, the conditions had to be met. Primarily, the conditions were that officials of an agency's or institution's law enforcement unit could not have access to that agency or institution's education records; the records of the law enforcement unit had to be maintained separately from the agency's or institution's education records and for the sole purpose of law enforcement; and the records of the law enforcement unit could only be disclosed to law enforcement officials of the same jurisdiction. Although the phrase "law enforcement officials of the same jurisdiction" was not defined in the regulations, the Secretary generally interpreted it to mean other law enforcement officials, in a similar locale, with a need to know.

In the interest of promoting school safety by making law enforcement unit records publicly available, Congress amended FERPA to remove these conditions and to simply exempt from FERPA records that are maintained by a law enforcement unit of an educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement. Because law enforcement unit records are no longer subject to these conditions, they may be disclosed by an educational agency's or institution's law enforcement unit without the prior consent of the eligible students or parents. That is, educational agencies and institutions can now follow their own policies or applicable State laws regarding the disclosure of law enforcement unit records that are created and maintained by law enforcement units for the purpose of law enforcement. This provision applies to institutions at all levels—elementary, secondary, and postsecondary.

The proposed regulations include a definition of "law enforcement unit" and "records of a law enforcement unit" and "records of a law enforcement unit" consistent with the Department's longstanding interpretation of these terms. That is, "law enforcement" concerns the violation of "laws" or rules of conduct applicable to all individuals, as opposed to the violation of an institution's internal rules applicable solely to students. Similarly, a definition of "disciplinary action or proceeding" has also been added under 99.3 to provide guidance to an institution in distinguishing law enforcement unit records from records of an institution's internal or administrative proceedings that deal with violations of the institution's own rules and standards of student conduct, which the Department has always considered "education records" and not "records of a law enforcement unit" under FERPA. The Department believes that these definitions capture the distinction between "disciplinary" and "law enforcement unit" records intended by Congress. For example, the term "disciplinary proceeding" is currently used in 99.31(a)(13), which implements part of the Student Right-to-Know and Campus Security Act of 1990, which provides that prior written consent is not required to disclose to an alleged victim of a crime of violence the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime. There is also a provision in the Student Right-to -Know and Campus Security Act requiring institutions of postsecondary education to disclose to the accuser the outcome of any campus disciplinary proceeding brought alleging sexual assault. Without these provisions for limited disclosure of these records of disciplinary proceeding, which clearly concern potentially "criminal" activity, these records could not be disclosed without prior written consent.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies and institutions of postsecondary education. However, these regulations will not have any significant economic impact on the entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

The Secretary received a number of comments on the NPRM regarding the proposed definitions of "law enforcement unit" (99.8(a)), "records of a law enforcement unit" (99.8(b)), and "disciplinary action or proceeding" (99.3), including the following:

- The proposed regulations define "law enforcement unit" and exclude from the term "records of a law enforcement unit" those records relating to a disciplinary action or proceeding conducted by the educational agency or institution. Since records of disciplinary actions or proceedings are considered "education records" under FERPA, student and professional journalists and other commenters argued that the proposed definition of disciplinary action or proceeding" should not include institutional proceeding relating to "criminal conduct" by students, that is, conduct that could be considered criminal and prosecuted under State or Federal law. Rather, some commenters believe that under the 1992 FERPA amendment, these kinds of disciplinary records should be treated the same as an institution's law enforcement unit records are treated and excluded from the definition of "education records." Some commenters stated further that disciplinary records pertaining to academic or other non-criminal type misconduct should be protected as "education records" under FERPA.

The Secretary requests additional comments from the public on these proposed definitions and the commenters' recommendations for changing those proposed definitions. The Secretary is particularly interested in how the commenters' recommendations would affect the structure and administration of law enforcement and disciplinary procedures at the elementary, secondary, and postsecondary levels. The Secretary requests specific comments on the following:

- As a school official, parent, or student, how do you believe you or your educational agency or institution would be affected if records of disciplinary actions or proceedings related to alleged criminal conduct and other non-academic matters were no longer protected by FERPA and could be disclosed to the public based on State law or institutional policy?
- Please provide information regarding the law enforcement unit at your educational agency or institution, including—*Jurisdiction*-What provisions does your law enforcement unit enforce ? What legal authority does it have?

Functions-What does it do? Does the law enforcement unit have any responsibilities for referring or adjudicating disciplinary actions against students?

Organizational placement-Where is the law enforcement unit placed in the institution; to whom does it report; what official, if any, hears "appeals" from its actions?

Personnel-What categories of employees work in the unit (e.g., investigative reports, arrests, judicial decisions, final disciplinary actions, etc.)?

Records-What kinds of written documents does the unit produce (investigative reports, arrests, judicial decisions, final disciplinary actions, etc.)?

- Should disciplinary records at the elementary or secondary level be treated the same as disciplinary records at the postsecondary level? Why or why not?
- If the definition of "disciplinary action or proceeding" is amended, as suggested by some commenters, to permit disclosure of records related to alleged criminal conduct and other non-academic matters, should FERPA prevent disclosure of the identity of victims of the alleged criminal conduct? Please explain your position.
- Should the names of students accused of criminal conduct be protected from disclosure during the investigative stage or [illegible]ould FERPA permit [illegible]e of only the resul[illegible]ome of the proc[illegible]ase explain.
- Would [illegible]chools to disclose [illegible] of students accused [illegible]nal conduct adversely affect students who were unfairly targeted or victims of mistaken identity? Please explain.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the Family Policy Compliance Office, 490 L'Enfant Plaza, SW, 2100 Corridor, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

Dated: December 7, 1993.

(Catalog of Federal Domestic Assistance Number does not apply.)

Richard W. Riley,
Secretary of Education

The Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99-FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.. 1232g, unless otherwise noted.

2. Section 99.3 is amended by revising paragraph (b)(2) in the definition of "Education records" and by adding a new definition of "Disciplinary action of proceeding" in alphabetical order to read as follows:

99.3 What definitions apply to these regulations?

****

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

****

Education records

****

(b) The term does not include—

****

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of 99.8.

****

3. A new 99.8 is added to read as follows:

99.8 What provisions apply to records of a law enforcement unit?

(a) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution that is authorized or designated by that agency or institution to enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law. A component of an educational agency or institution does not lose its status as a "law enforcement unit" if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that might lead to disciplinary action or proceedings against a student.

(b)(1) *Records of a law enforcement unit* means only those records, files, documents, and other materials that are—

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) "Records of a law enforcement unit" does not mean—(i) Records relating to law enforcement that are maintained by a component of the educational agency or institution other than the law enforcement unit; and

(ii) Records relating to a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g)

(FR Doc. 93-30397 Filed 12-13-93; 8:45 am)

Appendix 5

1994 AMENDMENT TO FERPA REQUIREMENT OF NOTIFYING A STUDENT UPON RECEIPT OF A GRAND JURY/LAW ENFORCEMENT SUBPOENA

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improving America's Schools Act of 1984".

TITLE II—AMENDMENTS TO THE GENERAL EDUCATION PROVISIONS ACT

SEC. 249. PRIVACY RIGHTS.

Section 444 of the Act (as redesignated by section 212(b)(1)) (20 U.S.C. 1232g) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;

(ii) by inserting after subparagraph (A) the following new subparagraph:

"(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.";

(iii) in clause (iii) of subparagraph (C) (as redesignated by clause (i), by striking "(C)" and inserting "(D)"; and

(iv) in subparagraph (D) as redesignated by clause (i)), by striking "(B)" and inserting "(C)"; and

(B) in paragraph (2), by striking "or other rights" and inserting "rights";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting ", including the educational interests of the child for whom consent would otherwise be required" before the semicolon;

(ii) by amending subparagraph (E) to read as follows:

"(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—

"(i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve the student whose records are released, or

"(ii) after November 19, 1974, if—

"(I) the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and

"(II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parents of the student.",

(iii) in subparagraph (H), by striking "and" after the semicolon;

(iv) in subparagraph (I), by striking the period and inserting "; and"; and

(v) by adding at the end of the following new subparagraph:

"(J)(i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the subpoena; and

"(i) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.";

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking the period and inserting ", unless—"; and

(ii) in subparagraph (B), by inserting "except as provided in paragraph (1)(J)," before "such information"; and

(C) in subparagraph (B) of paragraph (4), by adding at the end the following new sentence: "If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.";

(3) in subsection (c), by striking "The Secretary shall adopt appropriate regulations to" and inserting "Not later than 240 days after the date of enactment of the Improving America's Schools Act of 1994, the Secretary shall adopt appropriate regulations or procedures, or identify existing regulations or procedures, which";

(4) in subsection (e), by inserting "effectively" before "informs"; and

(5) by adding at the end the following new subsection:

"(h) Nothing in this section shall prohibit an educational agency or institution from—

"(1) including appropriate information in the educational record of any student concerning disciplinary action taken against such student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community; or

"(2) disclosing such information to teachers and school officials, including teachers and school officials in other schools who have legitimate educational interests in the behavior of the student.".

Appendix 6

1995 FINAL REGULATIONS—LAW ENFORCEMENT UNIT RECORDS EXCLUDED FROM FERPA

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880—AA57

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Family Educational Rights and Privacy Act (FERPA), which is section 438 of the General Education Provisions Act. These amendments are needed to implement a provision of the Higher Education Amendments of 1992, which modified the conditions under which records of an institution's law enforcement unit are excluded from the definition of "education records." As amended, FERPA excludes from the definition of "education records," and thereby from the restrictions and rights of access under FERPA, records that are maintained by a law enforcement unit of an educational agency or institution that were created by that unit for the purpose of law enforcement.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, Family Policy Compliance Office, Office of Management, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202-4605. Telephone (202) 260-3887. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Party Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Postsecondary institutions that have questions relative to any of the requirements in the Higher Education Act regarding disclosures of information about campus safety policies and procedures and campus crime statistics should contact Paula M. Husselmann or Kimberly L. Goto at (202) 708-7888.

SUPPLEMENTARY INFORMATION: On August 11 and December 14, 1993, the Secretary published two notices of proposed rulemaking (NPRMs) for 34 CFR part 99 in the *Federal Register* (58 FR 42836-42837 and 58 FR 65298-65300, respectively. The second NPRM did not change the proposed regulations but merely asked for additional public comment based on the response to the first NPRM.

The proposed regulations define for the first time both "law enforcement unit" and "disciplinary action or proceeding." In contrast to law enforcement unit records, the Department has been legally constrained to treat the records of a disciplinary action or proceeding as "education records" under FERPA (20 U.S.C. 1232g), that is, protected against nonconsensual disclosure except in statutorily specified circumstances and subject to inspection and review by parents and eligible students. The Secretary proposed the definition of "disciplinary action or proceeding" to help institutions distinguish disciplinary records from law enforcement unit records, which are excluded from the definition of "education records" in the circumstances specified.

Many of the public comments received on the first NPRM challenged the Department's position on this issue and expressed the view that records of institutional disciplinary proceedings taken against students accused of criminal and other non-academic misconduct should not be considered "education records" under FERPA and should be available to the public even without the parent's or student's consent. This issue, which has been the subject of recent media attention, took precedence over the issue of law enforcement unit records in the comment process. The Secretary sought additional public comment on the issue because it raised important and sensitive concerns about campus crime as well as students' need for privacy and access to records in the educational process.

The Secretary remains legally constrained to conclude that records of an institution's disciplinary action or proceedings are "education records" under FERPA, not law enforcement unit records, and that excluding these records from the definition of "education records" can be accomplished only through a statutory amendment of FERPA by Congress. In support of this view, Congress enacted in 1990 a new statutory provision permitting non-consensual disclosure of only the results of disciplinary proceedings conducted by postsecondary institutions; the disclosure is limited to the alleged victim of a crime of violence as defined in the United States Code and not to the public generally. However, the Secretary also recognizes that the issue of full public access to disciplinary hearing records concerning criminal and other non-academic misconduct is an important part of the ongoing debate concerning safety on college campuses and believes that, given the competing interests involved, these issues need to be aired and argued in the legislative arena. Therefore, the Secretary has notified Congress of the need to address this issue and has offered to work with Congress in drafting an appropriate FERPA amendment that identifies and balances these interests at various education levels.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRMs to comment, approximately 150 parties submitted comments on the proposed regulations. An analysis of the comments and changes in the regulations since publication of the NPRMs follows. Substantive issues are discussed under the section of the regulations to which they pertain.

Section 99.3 What definitions apply to these regulations? Definition of "Disciplinary action or proceeding."

Comments: A majority of commenters approved of the Secretary's effort to effectively clarify the distinction between disciplinary records and law enforcement unit records. Those commenters stated that to allow the release of student disciplinary records to the public without consent would compromise what they believe to be the fundamental educational mission of the campus judicial process. Several commenters also stated that if FERPA were amended to allow such disclosures, institutions would have to amend their disciplinary procedures to incorporate greater due process protections. These commenters, mostly officials at postsecondary institutions, argued that campus judicial systems have been effective in responding to violations of institutional policy because of the privacy protections afforded to students by FERPA.

A substantial minority, however, disagreed and stated that disciplinary records relating to criminal and other non-academic conduct should not be treated as "education records." They argued that postsecondary institutions have used FERPA to evade efforts by the public to gain access to information about crime on campuses. These commenters questioned the statement in the NPRMs that the Department has always considered records relating to an institution's internal proceedings that deal with violations of its own rules and standards of student conduct as "education records" under FERPA. The commenters believe that the Department's position in this matter represents an effort to circumvent the recent State court ruling, Red & Black Publishing Co. v. Board of Regents, 427 S.E.2d 257, 261 (Ga. 1993), which considered records of a disciplinary action against a student fraternity outside the definition of "education records" and, thus, outside the privacy protections of FERPA. Several commenters also requested that the proposed definition of "disciplinary action or proceeding" be changed to include only violations of academically-related rules and that disciplinary action taken against a student for criminal acts be excluded.

Discussion: The Secretary has carefully analyzed the statutory and regulatory authority to address these concerns. Based on the broad definition of "education records," which includes those records, files, documents, and other materials that contain information directly related to a student, except those that are specifically excluded by statute, all disciplinary records, including those related to non-academic or criminal misconduct by students, are "education records" subject to FERPA. It is noted that Red & Black Publishing Co. v. Board of Regents concerned records of a student "organization court," which disciplined a student organization (fraternity) for a rules violation, and did not concern disciplinary action against an individual student. More recently, another State court ruled that FERPA prevented a university from relating to the media personally identifiable information from student disciplinary records without consent. Shreveport Professional Chapter of the Society of Professional Journalists v. Louisiana State University in Shreveport, Case No. 393.332. First Judicial District Court, Caddo Parish, LA. (March 4, 1994). Although the Secretary is equally concerned with the problem of crime on campus, it is clear that only Congress has the authority to change the statutory provisions of FERPA to permit disclosure of disciplinary records without prior consent.

Nevertheless, because crime on our Nation's college campuses has escalated since 1974 when FERPA was enacted, the Secretary has notified Congress of the need to address this important issue. The Congress may find that public access to disciplinary records concerning criminal and other non-academic misconduct is an appropriate response to the problem of maintaining safe college campuses, and the Secretary has offered to work with Congress in writing an appropriate amendment to FERPA.

The Secretary received very few comments from State and local educational officials on how the proposed definition of "disciplinary action or proceeding" might affect elementary and secondary schools. Issues regarding the privacy of minor students and their families on the elementary and secondary level may require different treatment than those of postsecondary students. At this time, FERPA is consistent with those State laws that protect information regarding juvenile offenders.

Change: None.

Comments: Even among those commenters who approved of the proposed definition of "disciplinary action or proceeding," several postsecondary officials noted that it is important that institutions be able to tell victims the outcome of a disciplinary proceeding regarding their assailant.

Discussion: Section 99.31(a)(13) of the FERPA regulations, which implements 20 U.S.C. 1232g(b)(6) of the statute, permits postsecondary institutions to disclose to an alleged victim of a crime of violence, as defined in the United States Code, the results of any disciplinary proceeding conducted by the institution against the alleged perpetrator. As noted earlier, this specific statutory exception to the prior written consent rule, enacted in 1990 as part of the Student Right-to-Know and Campus Security Act, demonstrates Congress' view that disciplinary records are education records under FERPA. Additionally, 34 CFR 668.47(a)(12)(vi) (student Assistance General Provisions) provides that in cases of an alleged sex offense both the accuser and the accused shall be informed of the outcome of any institutional disciplinary proceeding at the postsecondary level. On the elementary and secondary level, Congress has made no changes to FERPA that would allow a school official to disclose information relating to a disciplinary action without the prior consent of that student's parents, to an alleged victim or the alleged victim's parents. The Secretary has no authority to change these statutory provisions to provide for disclosure of information from disciplinary records other than in the circumstances identified.

Change: None

Comments: Some commenters noted that conduct that would constitute a criminal violation should not be kept confidential as part of a campus disciplinary proceeding and that disciplinary hearings should be open to the public. In contrast, a number of school officials stated that to allow disciplinary hearings to be open to the public would substitute those processes for criminal proceedings, which would negate a long-standing separation of an on-campus disciplinary system from the criminal justice system.

Discussion: FERPA does not prevent an institution from opening disciplinary proceedings to the public. Rather, FERPA prevents the non-consensual disclosure of education records or personally identifiable information from "education records," unless the disclosure meets one or more of the statutory conditions for consensual disclosures. Schools routinely restrict access to disciplinary proceedings to those school officials with a "legitimate education interest," which is the first condition for non-consensual disclosure under section (b)(1) of the statute, because information from "education records" is frequently disclosed in a disciplinary hearing.

As discussed above, the Secretary has advised and offered to work with Congress toward an appropriate solution to the concern about campus safety issues in relation to FERPA.

Change: None.

Comments: Several commenters expressed concern that, as parents, they would want to know how many sexual assaults had been reported at the schools to which their children had applied or at which their children were attending. These commenters believed that disciplinary records related to criminal conduct should not be considered "education records."

Discussion: Parents sand students at the postsecondary level may currently obtain information bout the type and the amount of crime on college campuses under 34 CFR 668.47(a)(6)(Student Assistance General Provisions), which implements the Student Right-to-Know and Campus Security Act. These provisions require postsecondary institutions to report annually statistics concerning the occurrences on campus of certain crimes, including sexual assaults, that have been reported to local police agencies and to any official of the institution who has significant responsibility for student and campus activities. The Secretary is enforcing these requirements fully and believes that they will make students—and their parents—aware of the nature and the amount of crime on any college campus they may attend or which they are considering attending.

Change: None.

Comments: One commenter noted that the definition of "disciplinary action or proceeding" does not specifically state that disciplinary records are education records, thus leaving open to interpretation whether they are "education records" subject to FERPA. Another commenter suggested that the definition be changed to include all appears of the initial adjudication or imposition of sanctions.

Discussion: Under FERPA, the statutory definition of "education records" is all inclusive, covering "those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution." 20 U.S.C. 1232g(a)(4)(A). The only types of records specifically identified in FERPA are those that are specifically excluded from the definition of "education records," such as law enforcement unit records. 20 U.S.C. 1232g(a)(4)(B). FERPA does not list, identify, or single out any particular type of materials or documents as "education records." Consequently, the regulations explain that records of a law enforcement unit do not include or mean disciplinary records. That is, they are not excluded from the definition of "education records" under FERPA.

Change: None

Section 99.8 What provisions apply to records of a law enforcement unit?

Definition of "law enforcement unit".

Comments: One commenter, a State assistant attorney general, interpreted the proposed rules to mean that if a school principal or dean maintained a record on a student in disciplinary file it would be an "education record" protected by FERPA, but that the same record maintained by the institution's law enforcement unit would not be protected by FERPA and could be disclosed to an outside party directly from the campus law enforcement unit. A school official also commented that, under the proposed definition, it is not clear whether using law enforcement unit records during a disciplinary proceeding would render the records "disciplinary records" and thus "education records" subject to FERPA. A commenter from a State educational agency asked for clarification on whether a record of a law enforcement unit can lose its status and become an "education record."

Discussion: FERPA was amended by Congress to exempt from the definition of "education records" those records that are created by a law enforcement unit for a law enforcement purpose and maintained by that law enforcement unit, thus allowing educational agencies and institutions to disclose these records publicly without obtaining prior written consent. If a law enforcement unit of an institution creates a record for law enforcement purposes and provides a copy of that record to a dean, principal, or other school official for use in a disciplinary proceeding, that copy is an "education record" subject to FERPA if it is maintained by the dean, principal, or other school official and not the law enforcement unit. The original document created and maintained by the law enforcement unit is not an "education record" and does not become an "education record" merely because it was shared with another component of the institution.

Change: None.

Comments: A few commenters said that the proposed definition of "law enforcement unit" was too broad and could encompass offices or components within an institution that may maintain information directly related to students but that are responsible for the institution's compliance with Federal civil rights laws, financial aid regulations, hiring requirements, etc., which should not be considered law enforcement activities under FERPA. It was also suggested that the definition be limited to enforcement of "criminal" laws.

Discussion: The proposed definition is intended to cover that part of the institution which is responsible for providing and maintaining a safe and orderly school environment by monitoring and dealing with the conduct of individuals, not the institution itself. After considering these comments, the Secretary agrees that the definition is potentially too broad and may encompass functions of the institution, such as an office of legal counsel, that should not be included. However, the Secretary believes that adding "criminal" to the definition might unnecessarily restrict or confuse school officials as to their responsibilities for ensuring school safety.

Changes: The Secretary has revised the definition of "law enforcement unit" by adding a new provision to clarify that it pertains to those individuals or parts of the institution responsible for maintaining the salary and security of school surroundings and for enforcing laws against individuals and organizations within the school community and not those responsible for the institution's own compliance with various laws.

Comments: Several commenters associated with postsecondary institutions stated that they did not believe, for various reasons, that their campus security departments were "law enforcement units" under FERPA and requested clarification on the status of the records of what they considered a "non-law enforcement" campus security department. Some commenters also noted that a majority of colleges and universities do not employ "campus police officers" who possess police authority or perform official police functions. Instead, many institutions employ non-commissioned "campus security officers" whose main function is to keep the peace and enforce institutional policies. Another commenter noted that the definition of "law enforcement unit" was potentially confusing because student conduct code offenses are considered violations of the "law" and that an office that is responsible for student conduct might be considered a "law enforcement unit" under the definition.

Discussion: The Secretary has taken into consideration these comments and has revised the regulations to clarify that the term "law enforcement unit" under FERPA includes "a unit of commissioned police officers or non-commissioned security guards." That is, security departments such as those described by the commenters would be considered "law enforcement units" if they are officially authorized or designated by the institutions to carry out the functions listed in the regulatory definition, regardless of whether the individuals of that unit are commissioned police officers. The second part of the definition of law enforcement unit makes it clear that a security department retains its status as a "law enforcement unit" even if it also has responsibility for enforcing the institution's code of student conduct.

Change: The definition has been revised to state that it applies to units consisting of commissioned police officers as well as non-commissioned security guards.

Comments: One commenter, an official at a major university, stated that the law enforcement unit at that institution generates both "crime reports," which it considers public documents, and "incident reports," which are treated as education records and referred to the student affairs office for disciplinary purposes. The official further stated that he believes that the functions of the law enforcement unit and the functions of the student affairs office charged with administering the student discipline system are intertwined at this institution as they are at other institutions.

Discussion: If an institution has a security unit or individual with a dual role or function of enforcing institutional rules of conduct related to safety and security and referring potential or alleged violations of law to government authorities, that unit or individual would be considered a "law enforcement unit" under FERPA. Under the new amendment, records of that unit that were created and maintained for a law enforcement purpose are considered records of a law enforcement unit and, therefore, excluded from the definition of "education records" under FERPA.

The Secretary has revised the proposed regulations to clarify that where a law enforcement unit also performs non-law enforcement functions, the records created and maintained by that unit are considered law enforcement unit records, even where those records were created for dual purposes (e.g., for both law enforcement and disciplinary purposes). Only records that were created and maintained by the unit exclusively for a non-law enforcement purpose will not be considered records of a law enforcement unit. For example, if a campus security unit initiates an investigation into an incident on campus relating to a possible violation of law or the student conduct code, the record created and maintained by the unit in connection with this investigation is a law enforcement unit record, whether or not it is ever referred to the local police authori-

BEST COPY AVAILABLE

ties. If, however, the same unit or individual responsible for law enforcement investigates an incident for the purposes of internal disciplinary actions and creates a record exclusively for the purpose of a possible disciplinary action against the student, that record would not be considered a record of a law enforcement unit and would be an "education record" subject to FERPA. It should be stressed that the Secretary expects such occasions to be very rare, especially with incidents involving criminal conduct by students at postsecondary institutions.

Postsecondary institution officials should note also that when they decide to refer a matter to a disciplinary committee rather than to the institution's own law enforcement unit or directly to governmental law enforcement authorities, the institution is not relieved of its responsibilities for complying with the reporting requirements of the Student Right-to-Know and Campus Security Act, as codified in 34 CFR 668.47(a)(6)(Student Assistance General Provisions).

Changes: The definition has been clarified by the insertion of the word "exclusively" to indicate records created and maintained exclusively for internal disciplinary purposes and not law enforcement unit records and are, therefore, not excluded from the definition of "education records."

Comments: One commenter suggested that the regulations be changed to allow institutions that may not have a law enforcement unit to publicly disclose records that relate to a criminal act but which are not necessarily related to a disciplinary action.

Another commenter expressed concern that, because most public elementary and secondary schools do not have a "law enforcement unit," an individual administrator could be considered a "law enforcement unit" under the proposed definition. The commenter believed this dual role of school administrator and law enforcement official could pose a potential problem for abuse because of his or her access to both education records and law enforcement unit records. He stated that, in such a circumstance, a school official could "essentially confer or remove parents' rights of access to records, or maintain or eliminate confidentiality with respect to certain records by choosing to characterize documents as education records or records of a law enforcement unit."

Discussion: The Secretary has carefully considered whether provisions should be included in the regulations to address these concerns. The definition of "law enforcement unit" has been clarified by adding the term "officially" to describe an office, department, or individual who is authorized or designated by the agency or institution to perform law enforcement unit functions. Additionally, a subsection has been added to the definition to further describe a "law enforcement unit" as an entity or individual whose function is to maintain the safety and security of the institution.

The inclusion of the term "individual" is intended to permit small educational agencies and institutions to designate a single individual responsible for "law enforcement" and related safety and security functions. The records created and maintained by that individual for a law enforcement purpose may be disclosed, without prior consent of the parent or eligible student to whom the records relate, and the parent or eligible student would have no right to inspect and review the records under FERPA. The Secretary believes that the benefits gained by safer school surroundings outweigh any potential problems for abuse of the privacy or access rights under FERPA that might occur by including "individual" in the definition.

However, the Secretary does not have the authority to change the regulations to allow institutions that do not have a law enforcement unit to publicly disclose records that relate to a criminal act. Such a change would have to be made by Congress.

Change: The Secretary has revised the definition of "law enforcement unit" to include only entities or individuals officially authorized or designated by an agency or institution to enforce local or State law, or to refer to appropriate authorities a matter for enforcement of these laws, or to maintain the physical security and safety of the agency or institution.

Comments: A couple of commenters from State departments noted that the definition of law enforcement unit should be clarified to include a city police officer hired by a local educational agency or through special arrangements with local law enforcement authorities.

Discussion: The Secretary believes that the definition of "law enforcement unit" which includes the term "individual," as discussed in the previous comment, will allow schools to designate a single individual responsible for "law enforcement" and related safety and security functions. However, educational agencies and institutions should also be aware of the requirement under §99.6 of the FERPA regulations to adopt a policy regarding how the agency or institution meets the requirements of FERPA. In that policy, educational agencies and institutions are required to include a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest. If agencies and institutions have a policy of disclosing information from education records to officials of their own law enforcement unit, the officials of that unit must be designated under the school's FERPA policy as school officials with a legitimate educational interest. The Department can provide further guidance on the formulation of such a policy.

The Secretary encourages educational agencies and institutions that do not have a separate law enforcement unit to develop working relationships with local police authorities. However, FERPA currently prohibits schools from disclosing information from education records to local police authorities absent the prior written consent of parents or a lawfully issued subpoena or court order.

Changes: None.

Comment: One commenter expressed concern that the proposed regulations do not permit officials of an institution's law enforcement unit to disclose information that the unit had obtained from a student's education records to local police or prosecutors. He believes that the regulations, as proposed, would impede the institution's ability to investigate students suspected of falsified time sheets, transcript forgery, computer fraud, and similar crimes that may be demonstrated by documents considered "education records" under FERPA.

Discussion: An institution may disclose education records to an outside law enforcement agency without consent to comply with a judicial order or lawfully issued subpoena. The Secretary does not have the statutory or regulatory authority to permit the non-consensual disclosure of education records to outside law enforcement authorities in other circumstances. Any changes to this provision would have to be made by Congress.

Changes: None.

Comment: The same commenter proposed that §99.8(c)(1) be changed by replacing "contacting its law enforcement unit, orally or in writing" with "disclosing education records or information from education records to its law enforcement unit."

Discussion: This provision was included in order to clarify that the Secretary would not consider an institution "contacting" its own law enforcement officials regarding suspected criminal activity to involve necessarily the disclosure of information from an education record, which the institution would not be permitted to do under FERPA unless those individuals had been designated in the school's FERPA policy as "school officials" with legitimate educational interest in accordance with 34 CFR 99.6.

Additionally, as referenced in the previous comment, FERPA does not permit any party, including the institution's own law enforcement unit, that has received information from education records to redisclose that information without the prior consent of the parent or eligible student or in accordance with one of the exceptions listed under 34 CFR 99.31, which includes disclosure in compliance with a judicial order or lawfully issued subpoena.

Changes: None.

Comments: A commenter from a large metropolitan school district agreed that exempting law enforcement unit records from the definition of "education records" promotes cooperation between local police agencies and local educational agencies in their efforts to reduce violence on school campuses. He further stated, however, that to regard disciplinary records as "education records," which cannot be disclosed in the school district's own law enforcement unit, obstructs a law enforcement unit official's ability to maintain a safe school environment. In contrast, a commenter from a State educational agency, who agreed with the Secretary's proposed regulatory definition of "law enforcement unit," stated that the proposed change would allow schools to disclose to the public records created and maintained by school law enforcement units. He further noted, without explanation, that the change would assist public schools in working with local law enforcement authorities and other agencies to provide the best education for students in a safe environment conducive to learning.

Discussion: With regard to the first commenter's concern that FERPA prevents the disclosure of information from disciplinary records to the school district's designated law enforcement unit, as discussed in the previous comment section. FERPA does not prevent such a disclosure if the officials of the law enforcement unit have been designated as "school officials" with a legitimate educational interest under the district's student records policy, as required by 34 CFR 99.6. However, FERPA does prohibit an educational agency or institution from disclosing information from education records, including information from disciplinary records, to an outside, governmental law enforcement authority, except in certain circumstances such as in response to a judicial order or lawfully issued subpoena, provided notice requirements of §99.31(a)(9) have been met. As previously noted, the Secretary does not have the statutory or regulatory authority to permit the non-consensual disclosure of information from education records, such as disciplinary records, to third parties, including governmental law enforcement authorities.

Changes: None.

Comments: A few commenters noted that students who are victims of crime should have a right to know about the progress of the investigation of their cases. In contrast, several commenters suggested that information regarding active criminal investigations be protected from disclosure until the investigations have been closed or adjudicated.

Discussion: The Secretary has considered these comments but believes that because agencies and institutions are permitted, not required, by FERPA to publicly disclose information from law enforcement unit records, schools should develop their own policies with regard to if and when they will disclose the information.

Changes: None.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

In the NPRMs, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRMs and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practices and procedures, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

Dated: January 10, 1995

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Part 99 of Title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows: Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.3 is amended by republishing the introductory text of paragraph (b) and revising paragraph (b)(2) in the definition of "Education records" and by adding a new definition of "Disciplinary action or proceeding" in alphabetical order to read as follows:

§99.3 What definitions apply to these regulations?

* * * * * *

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institutions with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

* * * * *

Education records* * *

(b) The term does not include:

* * * *

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of §99.8

3. A new §99.8 is added to subpart A to read as follows:

§99.8 What provisions apply to records of a law enforcement unit?

(a)(2)Law enforcement unit means any individual, office, department, division, or other component or an educational agency or institution, such as a unit of commissioned policy officers or non-commissioned security guards, that is officially authorized or designated by that agency or institution to—

(i) Enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law against any individual or organization other than the agency or institution itself; or

(ii)Maintain the physical security and safety of the agency or institution.

(2) A component of an educational agency or institution does not lose its status as a law enforcement unit if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that constitutes or leads to a disciplinary action or proceedings against the student.

(b)(1)Records of a law enforcement unit means those records, files, documents, and other materials that are—

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean—

(i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or

(ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contracting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(23) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of§99.30, while in the possession of the law enforcement unit.

(d)The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g(a)(4)(B)(ii)

(FR Doc. 95-1000 Filed 1-13-95; 8:45am)

BILLING CODE 4000-01-P

Appendix 7

INTERNAL REVENUE CODE OF 1954, SECTION 152
(Including amendments and applicable sections of the Tax Reform Act of 1976)

Because both the "Final Regulations" and "The Act" make references to the Internal Revenue Code of 1954, Section 152, it is reproduced here in its entirety from the 1976 edition of the Internal Revenue Code of 1954, with permission from Prentice Hall, Inc., Englewood Cliffs, N.J. 07632.

SEC. 152. DEPENDENT DEFINED.

(a) General Definition.—For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

(9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

(10) An individual who—

(A) is a descendant of a brother or sister of the father or mother of the taxpayer,

(B) for the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(C) before receiving such institutional care, was a member of the same household as the taxpayer.

Last amendment.—Sec. 152(a) appears above as amended by § [1](b) of Public Law 90-78, Aug. 31, 1967, effective (Sec. 2 of Public Law 90-78, Aug. 31, 1967) with respect to taxable years beginning after Dec. 31, 1966.

Prior amendment.—Sec. 152(a) was previously amended by Sec. 4(a) of Public Law 85-866, Sept. 2, 1958 (qualified effective date rule in Sec. 1(c)(1) of Public Law 85-866, Sept. 2, 1958). Sec. 152(a) as so amended is in P-H Cumulative Changes.

(b) Rules Relating to General Definition.—For purposes of this section—

(1) The terms "brother" and "sister" include a brother or sister by the half-blood.

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual), or a foster child of an individual (if such child satisfies the requirements of subsection (a) (9) with respect to such individual), shall be treated as a child of such individual by blood.

Last amendment.—Sec. 152(b)(2) appears above as amended by Sec. 912(a) of Public Law 91-172, Dec. 30, 1969, effective (Sec. 912(b) of Public Law 91-172, Dec. 30, 1969) with respect to taxable years beginning after Dec. 31, 1969.

Prior amendment.—Sec. 152(b)(2) was previously amended by Sec. [1](a) of Public Law 86-376, Sept. 23, 1959, effective (Sec. [1](b) of Public Law 86-376, Sept. 23, 1959) for taxable years beginning after Dec. 31, 1958. Sec. 152(b)(2) as so amended is in P-H Cumulative Changes.

(3) The term "dependent" does not include any individual who is not a citizen or national of the United States unless such individual is a resident of the United States, of a country contiguous to the United States, of the Canal Zone, or of the Republic of Panama. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer—

(A) born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him, or

(B) legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen or national of the United States.

Last amendment.—Sec. 152(b)(3) appears above as amended by Sec. [1](a) of Public Law 92-580, Oct. 27, 1972, effective (Sec. [1](c) of Public Law 92-580, Oct. 27, 1972) with respect to taxable years beginning after Dec. 31, 1971.

Prior amendments.—Sec. 152(b)(3) was previously amended by the following: Sec. 4(b) of Public Law 85-866, Sept. 2, 1958, effective (Sec. 4(d) of Public Law 85-866, Sept. 2, 1958) for taxable years beginning after Dec. 31, 1957.* Sec. 2 of Public Law 333, Aug. 9, 1955 (qualified effective date rule in Sec. 3(b) of Public Law 333, Aug. 9, 1955).*

*Sec. 152(b)(3) as so amended is in P-H Cumulative Changes.

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

Addition.—Sec. 152(b)(5) was added by Sec. 4(c) of Public Law 85-866, Sept. 2, 1958 (qualified effective date rule in Sec. 1(c)(1) of Public Law 85-866, Sept. 2, 1958).

(c) Multiple Support Agreements.—For purposes of subsection (a), over half of the support of an individual for a calendar year shall be treated as received from the taxpayer if—

(1) no one person contributed over half of such support;

(2) over half of such support was received from persons each of whom, but for the fact that he did not contribute over half of such support, would have been entitled to claim such individual as a dependent for a taxable year beginning in such calendar year;

(3) the taxpayer contributed over 10 percent of such support; and

(4) each person described in paragraph (2) (other than the taxpayer) who contributed over 10 percent of such support files a written declaration (in such manner and form as the Secretary or his delegate may by regulations prescribe) that he will not claim such individual as a dependent for any taxable year beginning in such calendar year.

(d) Special Support Test in Case of Students.—For purposes of subsection (a), in the case of any individual who is—

(1) a son, stepson, daughter, or stepdaughter of the taxpayer (within the meaning of this section), and

(2) a student (within the meaning of section 151(e)(4)), amounts received as scholarships for study at an educational institution (as defined in section 151(e)(4)) shall not be taken into account in determining whether such individual received more than half of his support from the taxpayer.

(e) Support Test in Case of Child of Divorced Parents, etc. (1) General rule—If—

(A) a child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year; such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year unless he is treated, under the provisions of paragraph (2), as having received over half of his support for such year from the other parent (referred to in this subsection as the parent not having custody).

(2) **Special rule.**—The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—

(A)(i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and

(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B)(i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for all of such children) for the calendar year, and

(ii) if the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For the purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

(3) **Itemized statement required.**—If a taxpayer claims that paragraph (2)(B) applies with respect to a child for a calendar year and the other parent claims that paragraph (2)(B)(i) is not satisfied or claims to have provided more for the support of such child during such calendar year than the taxpayer, each parent shall be entitled to receive, under regulations to be prescribed by the Secretary or his delegate, an itemized statement of the expenditures upon which the other parent's claim of support is based.

(4) Exception for multiple-support agreement.—The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(5) Regulations.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

Addition.—Sec. 152(e) was added by Sec. [1](a) of Public Law 90-78, Aug. 31, 1967, effective (Sec. 2 of Public Law 90-78, Aug. 31, 1967) with respect to taxable years beginning after Dec. 31, 1966.

TAX REFORM ACT OF 1976

[§ 484] CODE SEC. 152. DEPENDENT DEFINED.

* * * * * * * * * * * * *

(e) Support Test in Case of Child of Divorced Parents, etc.—

* * * * * * * * * * * * *

(2) **Special rule.**—The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—

(A) (i) the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and

(ii) such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B)(i) the parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for[1] each of such children) for the calendar year, and

(ii) the parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For the purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

* * * * * * * * * * * * * * * *

[Footnote 484] Matter in *italics* in Sec. 152(e)(2)(B)(i) added by section 2139(a), '76 Tax Reform Act, which struck out (1) "all"

Effective date (Sec. 2139(b), '76 Tax Reform Act).—Applies to taxable years beginning after the date of enactment of this Act.

Title 38, United States Code
Veterans' Benefits

Examination of Records

Section 1790 (c) Notwithstanding any other provision of law, the records and accounts of educational institutions pertaining to eligible veterans or eligible persons who received educational assistance under this chapter or chapter 31, 32, 34, or 35 of this title, as well as the records of other students which the Administrator determines necessary to ascertain institutional compliance with the requirements of such chapters, shall be available for examination by duly authorized representatives of the Government. (Added P.L. 92-540, §316(2), amended P.L. 94-502, § 510).

Appendix 8

DIRECTORY INFORMATION ITEMS IDENTIFIED IN A 1988 AAU SURVEY AND A 1991 AACRAO SURVEY OF MEMBER INSTITUTIONS

Survey of Directory Information Items Identified by 46 (out of 56) AAU (American Association of Universities) Member Institutions, 1988

Item	# of Schools Identifying Item as Directory Information (N=46)
Name	46
Address	46
Phone	46
Dates of attendance	46
Degree(s) received	46
Major (program)	39 (85%)
Activity and sport participation (plus height and weight)	31 (67%)
Birth date	26 (56%)
Most recent educational institution attended	22 (48%)
Class (year in school)	20 (43%)
Place of birth	20 (43%)
College (unit)	15 (33%)
Full-time/part-time	10 (22%)
Sports participation (height and weight of team members)	5 (11%)
All previous educational institutions attended	5 (11%)
Parent/spouse names/addresses	5 (11%)
Status (graduate, undergraduate, professional, etc.)	4 (9%)
Sex	4 (9%)
Officially recognized activity participation	3 (7%)
Hometown	3 (7%)
Expected graduation date or degree candidacy	3 (7%)
Adviser name	3 (7%)
Campus	3 (7%)
Age	2 (4%)
Theses titles/topics	2 (4%)
Marital status	2 (4%)
Class standing	2 (4%)
Date of admission	1 (2%)
Position on sports teams	1 (2%)
Cumulative credits earned	1 (2%)
Relationship to alumni	1 (2%)
Student publications	1 (2%)
Dates of employment with institution	1 (2%)
Employment as TA/RA	1 (2%)
Secondary school attended	1 (2%)
Type of teacher certification	1 (2%)
Ethnic background	1 (2%)
Arrest records/traffic accident information	1 (2%)
Student parking permit information	1 (2%)
Names and attendance of students in courses	1 (2%)

Directory Information Items Identified in a Survey of 500 Randomly Selected AACRAO Member Institutions, 1991

Item	# of Schools Identifying Item as Directory Information (N=257)
Name	248 (97%)
Dates of attendance	222 (86%)
Degree(s) received	220 (86%)
Major (program)	217 (84%)
Address	213 (83%)
Phone	198 (77%)
Full-time/part-time	152 (59%)
Birth date	142 (55%)
Sports participation (height and weight of team members)	140 (55%)
Class (year in school)	131 (51%)
Activity and sport participation (plus height and weight)	99 (39%)
College (unit)	96 (37%)
Sex	91 (35%)
All previous educational institutions attended	39 (15%)
Student's current class schedule	36 (14%)
Place of birth	14 (5%)
Parent/spouse names/addresses	4 (2%)
Marital status	2 (1%)

Appendix 9

SAMPLE COMPLIANCE DOCUMENTS

(SAMPLE FORM NO. 1)
REQUEST TO PREVENT DISCLOSURE OF DIRECTORY INFORMATION

To: All Students Term/Semester/Year ______________

These items listed below are designated as "Directory Information" and may be released for any purpose at the discretion of our institution.

Under the provisions of the Family Educational Rights and Privacy Act of 1974, as Amended, you have the right to withhold the disclosure of any or all of the categories of "Directory Information" listed below.

Please consider very carefully the consequences of any decision by you to withhold any category of "Directory Information." Should you decide to inform the institution not to release any or all of this "Directory Information," any future requests for such information from non-institutional persons or organizations will be refused.

The institution will honor your request to withhold any of the categories listed below but cannot assume responsibility to contact you for subsequent permission to release them. Regardless of the effect upon you, the institution assumes no liability for honoring your instructions that such information be withheld.

Please mark the appropriate boxes and affix your signature below to indicate your disapproval for the institution to disclose the following public or Directory Information.

	Information	Disclose No
Category I	Name, address, telephone number, dates of attendance, class.	_____
Category II	Previous institution(s) attended, major field of study, awards, honors (includes Dean's list), degree(s) conferred (including dates).	_____
Category III	Past and present participation in officially recognized sports and activities, physical factors (height, weight of athletes), date and place of birth.	_____
Category IV	Any item(s) listed above.	_____

____
(specify which items listed above you wish not to be disclosed)

Date ______________ Student Signature ____________________

If this form is not received in (campus) office prior to (date), it will be assumed that the above information may be disclosed for the remainder of the current academic year. A new form for non-disclosure must be completed each academic term/semester/year.

BEST COPY AVAILABLE

(SAMPLE FORM NO. 2)
STUDENT REQUEST TO INSPECT AND REVIEW EDUCATION RECORDS

Date submitted: ____________

To: Record Custodian

I wish to inspect my education record located in the following office(s):

____

____

Print Name (Student) ______________________________

Address ______________________________________

Student's Signature ________________ Telephone No. ________________

....

To: Student

Your request for inspection of your record was received on (date).
The requested record will be available at (office) for review on (date).

Date ____________ School Official's Signature ______________________

....

To: Custodian

I have inspected and/or have been informed of the contents of the requested education record identified above and am satisfied with its accuracy and completeness.

Date: ____________ Student's Signature ______________________

....

To: Record Custodian

I have inspected and/or have been informed of the contents of the requested education record identified above and am not satisfied with its accuracy and completeness for the following reason(s):

____

____

Date ____________ Student's Signature ______________________

....

Observations of the record custodian of disposition of the request:

____

Date ____________ Custodian's Signature ______________________

....

I hereby agree to keep the information disclosed to me confidential according to applicable legislation and regulations.

Signature ________________ Date ________________

(SAMPLE FORM NO. 3)
REQUEST TO REVIEW EDUCATION RECORDS

Date: ______________________

NAME OF STUDENT: ____

STUDENT NUMBER: ____

PURPOSE OF REVIEW: ____

____

ITEM(S) OF INFORMATION REQUESTED: ____

____

____

NAME OF REQUESTOR: ____

REQUESTOR'S AFFILIATION: ____

OFFICE TO WHICH REQUEST WAS MADE: ____

I hereby agree to keep the information disclosed to me confidential according to applicable legislation and regulations.

Signature ______________________________ Date ______________________

....

DISPOSITION OF REQUEST: __________ APPROVED __________ DISAPPROVED

SPECIFY MATERIALS REVIEWED (RECORDS, TYPES OF INFORMATION):

____

____

Signature of Official Approving Request ______________________________ Date __________

Name and Title of Official Supervising Review ______________________________ Date __________

(SAMPLE FORM NO. 4)
STUDENT REQUEST FOR FORMAL HEARING

To: Chairperson, Hearing Panel Date: ______________

From: (Student's Name)

Subject: Request for Hearing Concerning Student Education Records

I request a formal hearing concerning correction of what I believe to be inaccurate or misleading information, described below, contained in my education records.

Contested Information	Education Record Contested
______________________	______________________________
______________________	______________________________
______________________	______________________________
______________________	______________________________

Please notify me of the date, time, and place of the hearing. My address and telephone number follow:

Address ____

____

Student's Signature ____

Telephone No. ____

1st ENDORSEMENT

From: (Chairperson, Hearing) Date: ______________

To: (Student's Name)

The decision of the Hearing is as follows:

____

____

____

____

Chairperson, Hearing ______________________________________

(SAMPLE FORM NO. 5)
UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF MANAGEMENT

Model Notification of Rights under FERPA*

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. They are:

(1) The right to inspect and review the student's education records.

(2) The right to request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights.

(3) The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent.

(4) The right to file with the U.S. Department of Education a complaint concerning alleged failures by State University to comply with the requirements of FERPA.

(5) The right to obtain a copy of the State University's student records policy. You can obtain a copy of the policy from the Registrar's office.

* Section 99.7 of FERPA requires that schools annually notify students currently in attendance of their rights under FERPA and inform them of the location where the policy can be obtained. The notification may be given by any means reasonably likely to inform students of their rights such as publication in a newsletter or in a student handbook.

A school may wish to include in its annual notification of rights its notice regarding its intent to designate certain information as directory information in accordance with 34 CFR §99.37. Section 99.3 of the FERPA regulations provides a list of the types of information that can be designated as directory information. That list is not all-inclusive. A school could also designate photograph and class schedule, for example, as directory information. However, personal identifiers such as social security numbers and student identification numbers cannot be designated as directory information. If you have any questions with regard to designating certain information as directory information under §99.3 or the notice regarding such designation under §99.37, please all the Family Policy Compliance Office for technical assistance. Our telephone number is: (202) 260-3887.

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C. 20202

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Appendix 10

STUDENT WORKER STATEMENT OF UNDERSTANDING OF THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

I understand that by the virtue of my employment with the XXXXXXXX Office at (institution), I may have access to records which contain individually identifiable information, the disclosure of which is prohibited by the Family Educational Rights and Privacy Act of 1974. I acknowledge that I fully understand that the intentional disclosure by me of this information to any unauthorized person could subject me to criminal and civil penalties imposed by law. I further acknowledge that such willful or unauthorized disclosure also violates (institution's) policy and could constitute just cause for disciplinary action including termination of my employment regardless of whether criminal or civil penalties are imposed.

_______________ ________________________________

DATE EMPLOYEE'S SIGNATURE

Appendix 11

INSTITUTIONAL STATEMENTS ON LEGITIMATE EDUCATIONAL INTEREST

Below are representative statements from institutions which have defined legitimate educational interest as part of their written institutional policy on FERPA.

* * * * * * * * * * *

" 'Legitimate educational interests' means (1) the information or records requested is relevant and necessary to accomplishment of some task or determination; and, (2) the task or determination is an employment responsibility for the inquirer or is a properly assigned subject matter for the inquirer's employment responsibility."

* * * * * * * * * * *

" For these purposes, 'legitimate educational interests' shall mean an EDUCATIONALLY RELATED purpose which has a directly identifiable educational relationship to the student involved and underlies the request. More particularly, the following criteria shall be taken into account in determining the legitimacy of a University official's access to student records:

- The official must seek the information within the context of the responsibilities that he or she has been assigned;
- The information sought must be used within the context of official University business and not for purposes extraneous to the official's area of responsibility or to the University;
- The information requested must be relevant and necessary to the accomplishment of some task or to making some determination within the scope of University employment;
- The task must be determined to be consistent with the purposes for which the data are maintained. Requests related to institutional research and studies are subject to this criterion.

Disclosure to a school official having a legitimate education interest does not constitute institutional authorization to transmit, share, or disclose any or all information received to a third party. AN UNAUTHORIZED DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION FROM THE EDUCATION RECORD OF THE STUDENT IS PROHIBITED."

* * * * * * * * * * *

"School officials" who have a "legitimate educational interest." "School officials" shall mean any person who is a trustee, officer, agent or employee of the University. "Legitimate educational interest" shall mean any authorized interest, or activity undertaken in the name of the University for which access to an Education Record is necessary or appropriate to the proper performance of the undertaking. It shall include, without limitation, access by a student, instructor, department or division head, dean, the chief academic and student affairs administrator, the president, a trustee, the custodian of the University records, the alumni administrator, legal counsel, the financial aid administrator, administrators charged with maintaining Education Records, the staff and subordinates of the foregoing, and others authorized by the President, to the extent the foregoing persons are acting within the course and scope of their employment and authority.

* * * * * * * * * * *

1. School Officials. School officials with legitimate educational interest in a student's educational records may access those records without the student's consent. School officials are those officials . . . who act in the student's educational interest within the limitations of their 'need to know.' This includes faculty, administrators, clerical and professional employees. Also included are students serving on university committees where legitimate 'need to know' exists. The demonstrated 'need to know' or the 'legitimate educational interest' must be supported by the institutional responsibilities assigned to an individual and/or to a committee. It is the responsibility of the respective Records Custodian to assess the 'legitimate educational interest' or 'need to know' of the request and to require proper identification, if necessary. When doubt is raised by a Records Custodian about an individual's 'need to know' or 'legitimate educational interest' in having access to specific information the issue shall be decided by the Provost. The Records Custodian will determine whether copies of materials may be made and/or if others need to be present during the examination of the educational records.

* * * * * * * * * * *

"Confidential data" includes students' grades, class schedules, and all other nondirectory information contained in a student's records. Confidential student data may only be utilized for official University business and made available to members of the University community who have a "legitimate educational interest" on a "need to know" basis. What do we mean by a "legitimate educational interest"? A demonstrated "need to know" by those officials of an institution who act in the student's educational interest. It includes faculty, administration, clerical and professional employees, and other persons who need student record information for the effective functioning of their office or position. An example of this is faculty and student members of registered honor societies. They may have access to student records for the sole purpose of determining eligibility for membership on the basis that faculty and students are acting in an official university capacity that is integral to the education function of the University. In such cases, the legitimate educational interest of students and the University has been served.

Appendix 12

FORMS FOR PROVIDING COMPUTER ACCESS TO A STUDENT INFORMATION SYSTEM

Office of the Registrar
Indiana University-Bloomington
Request for Access to Restricted Data

I. REQUEST FOR ACCESS [to be completed by Data Supervisor]

A. Need for Access

1. Identify the employee for whom access to the Student Records and Schedule of Classes files is being requested.

(Full) Name: ______________________________

Employee ID/SSN: __________ (Former Name) ______________________

Title: ______________________________

Department: ______________________ Account No. ____________

User ID: ________________ FOCUS User ID ________________
(if requesting FOCUS access)

2. Is this person replacing an employee who had access?

If yes, who ______________________ and did this person leave this position for another at I.U.? (Y N)

Should access to the Student Records system be deleted for this person?
(Y N) If yes, ☐ Immediately ☐ Future date _____

Did she/he have FOCUS access? ☐ Yes ☐ No

3. The general duties of this person include (check all that pertain):

☐ Advise students on their academic progress/requirements

☐ Evaluate applications for admission

☐ Maintain student records/monitor academic progress

☐ Coordinate course offerings and class scheduling

☐ Look up student information

  ☐ Only public (directory) information
  ☐ Public and restricted information

☐ Coordinate student class roster and grade collection

☐ Develop and submit FOCUS (computer) programs to retrieve student or course information. If so, what student and course populations will be reported?

Campus(es):__________ School(s): ______________
Student Major(s): ______________________
Course Department: ______________________
Other: ______________________
Have you taken a FOCUS class through University Computing Services?☐ Yes ☐ No

Other (explain): ______________________
____

07.01.94

Office of the Registrar
Indiana University-Bloomington
Request for Access to Restricted Data

B. Access to Data

Check the boxes of the data categories below that pertain to the kind of access this person needs. Note how the information will be used, for example, advise students, monitor academic progress, etc. The use of information must relate to the responsibilities of the person as noted on page 1. Also, note in the Use of Information column any specific on-line screens to which the requestor needs access. Unless noted, access will be evaluated based upon general responsibility profiles.

Category of Data	*Access Type On-line Screen*		*Retrieval*	*Use of Information and Specific Access*
	View	Update	FOCUS*	*(if applicable)*
Student Statistical Data	☐	☐		
Student Address Information	☐	☐		
Student Administrative Data	☐		☐	
Admission Information (Permission to access other than basic on-line screens must be obtained from the Office of Admissions.)	☐		☐	
Student Academic Objective Information	☐		☐	
Degree Information	☐		☐	
Student Registration Data	☐		☐	
Student Course Data-Historical	☐		☐	
Checklist Data: Academic and Administration (Permission to access outstanding financial obligations must be obtained from the Office of the Bursar.)	☐		☐	
Schedule of Classes Data	☐		☐	
Section Authorization		☐		
Class Roster Data	☐		☐	
Degree Audit (IUCARE)	☐	☐	☐	
Other: ____________________	☐	☐	☐	
____________________	☐	☐	☐	

*Requestor must have had or be willing to take a FOCUS computer class through University Computing Services or have a sponsor.

II. Authorization of Access

☐ It is expected that your on-line access will be added to the Indiana University security accounts tables as of Monday, ______. Your authorization to access will be included with your USE/TPX password.

  ☐ Your on-line access profile will be released to your DataSupervisor. It is the responsibility of your Data Supervisor to orient you to the transactions to which you have given access. Training for direct access to files will be provided by University Computing Services.

  ☐ Your on-line access profile will be released to your Data Supervisor after an orientation session with the Office of the Registrar contact person. This orientation program will include both general information and specific items tailored to your particular unit's needs, including a description of the current batch and on-line Student Record and Schedule of Classes Systems, the processing schedules for certain types of data, viewing on-line transactions, and security.

☐ Authorization to the Information Center files (FOCUS) will be issued to you by University Computing Services. Training for access to the files will be provided by University Computing Services.

Signature of Bloomington Campus Registrar

Date of Approval

ACCEPTANCE OF RESPONSIBILITY

[This form must not be completed until the request for access has been approved by the Registrar.]

I understand my acceptance of access to the Student Records and Schedule of Classes systems signifies I accept the responsibility for complying with the institutional policy for the Release of Student Information. I have been given copies of and have read the Release of Student Information policy and the Explanation of Access guidelines. By my signature below, I understand and agree to preserve the security and confidentiality of information I access.

I will also inform my Data Supervisor (who will inform the Office of the Registrar) when my need to access student and course data differs from that stated in this Access Request document.

I understand I am responsible for the personal security of my password.

Signature of I.U. Employee ______________________ Date ______________

I am responsibile for providing an orientation program for the employee or making arrangements for staff from the Office of the Registrar to provide the orientation. I will inform the Office of the Registrar contact person of any change in status of this employee. I will initiate access deletion if this employee leaves the current position for which he/she has been given approval, and will initiate a new Access Request document for this employee's replacement, if appropriate.

Signature of Data Supervisor ______________________ Date ______________

EXPLANATION OF ACCESS [Requestor should keep this section for reference.]

The procedures to obtain access to Student Records data are in compliance with federal government ("Family Educational Rights and Privacy Act of 1974") and Indiana University ("Release of Student Information Policy, 1977" - refer to Appendix B) regulations. The procedures also follow Indiana University's "Policy on Access to Institutional Data, 1991," which establishes the general structure for which data are made accessible to data users. Under this Policy "limited-access data" (or restricted data) is defined as those data elements that may not be accessed without specific authorization. Some Student Records data elements are considered "public" or "university - internal." These data are available to any eligible employee of the University, without restriction, for the conduct of University business. The procedures discussed in this document refer only to access to "restricted" data.

What is (on-line) view access?

On-line access is a tool by which certain information stored on computer files at the University Computing facility may be viewed on a computer terminal/pc. Information accessible to authorized individuals includes Schedule of Classes and Student Records data. On-line access allows an authorized user the opportunity to view information on specific students and courses. In addition, some data may be updated by authorized individuals.

What is retrieval access?

Direct access provides an avenue by which institutional data stored in the Information Center files at the University Computing facility may be retrieved. The primary access tool is FOCUS, which allows users to write programs or queries. Information accessible to authorized individuals include Schedule of Classes and Student Records data. Direct access allows an authorized user the opportunity to select special student and course populations and retrieve summary information for evaluative and planning purposes and detailed reports for operational purposes.

Who may request access?

Security of restricted data is a matter of major University concern. The Office of the Registrar maintains the records of and controls access to Student Records and Schedule of Classes computer files for the Bloomington campus. Written requests from offices on the Bloomington campus for access to restricted data must be initiated by the dean, chairperson, or director of the unit desiring access and directed to the Office of the Registrar. Approval for access will be evaluated based upon "a legitimate need to know" the information as outlined in the "Release of Student Information Policy," section K.

For each unit approved for access, a fulltime employee in the unit will be designated as the Data Supervisor. The Data Supervisor will be the contact person with the Office of the Registrar for matters concerning data access and security. The Data Supervisor will be issued an *Inquiry Manual* and/or *Enrollment Information Systems (EIS) Manual* for on-line access and a *FOCUS Users Manual* for direct access. These are the primary access reference manuals. The Data Supervisor will be asked to participate in meetings set up by the Office of the Registrar, during which new developments will be discussed, and update information distributed. It is the responsibility of the Data Supervisor to train new staff in his/her unit and to share access information with staff who have access.

What is the access request procedure and approval process?

Before approving access to restricted data, the Office of the Registrar requires that a Request for Access document be completed for each individual who is to have access. There is one document for requesting both on-line and direct access. Anyone who requests direct access must also request on-line access since on-line transactions are needed to verify FOCUS output.

The Data Supervisor sends a completed Request for Access document to the Office of the Registrar. Each request for access is individually evaluated by Office of the Registrar staff. It is expected that only those persons identified on request forms will have access to the system; therefore, access must be requested for each person in order to maintain system security. Access is issued to a person, not a position or a workstation.

For the initial access request from a unit, the Office of the Registrar will arrange an orientation meeting for the Data Supervisor and other individuals within the unit who have been approved for access. This orientation program will include both general information and specific items tailored to the unit's needs and concerns. For units that already have access, the Data Supervisor is responsible for providing an orientation program to employees in his/her unit.

For direct access, the requestor or Data Supervisor must also contact University Computing Services (UCS) to make arrangements for the requestor to attend a FOCUS training class. Final approval for direct access will not be granted until arrangements with UCS have been made. Authorization to the direct access system will be issued to the requestor by UCS.

What are the responsibilities of persons with access?

Each person approved for access is responsible for security of his/her password and protection of information. The authority to access is linked to a person's user ID and password on the USE/TPX system. At no time should any individual share his/her password with another person (including the Data Supervisor), display the password in public view, or install the password as a macro function. Each person approved for access is responsible for signing off when finished with access.

Further, it is the express understanding of the Office of the Registrar that Student Records information available through access will be employed only for the purpose for which it was requested and will not be released to any other individual or office for another purpose. A person having access to student records should be aware that there are possible civil sanctions and University disciplinary action for violating records privacy agreements.

All persons accessing confidential or restricted student data must guarantee to maintain data about individual students in a secure fashion, such that it cannot be viewed——by screen access, file access or in printed form——by unauthorized individuals. Although it is allowable to print a report or screen of confidential information for authorized recordkeeping or advising purposes, the user should not release the printed information to other individuals or offices. Any personally identifiable confidential data contained in print form or on computer files which are no longer needed should be destroyed in such a way that identification of a student is not possible.

As part of the request process, each person granted access must read and sign an agreement acknowledging an understanding of the person's responsibilities for password security and maintaining the confidentiality of the data that he/she accesses. This signed agreement is kept on file by the Office of the Registrar.

Each person granted access is also responsible for terminal/pc equipment security, which includes password sign-on and sign-off procedures and the proper placement of the equipment so that the screen cannot be viewed from a public location.

What happens when an employee terminates employment in the unit?

The Data Supervisor is responsible for maintaining the overall security of the access and release of information in his/her unit. As a personnel change occurs, the Data Supervisor must notify the Office of the Registrar in order to initiate access deletion when a staff member terminates employment or transfers to another department. A new request for access must be submitted (via an Access Request document) for a personnel replacement.

What happens if a security violation is detected?

The employee should immediately change his/her password, or have University Computing Services reset it, and notify the Data Supervisor. The Data Supervisor is responsible for contacting the Office of the Registrar when a password security violation has been detected.

Is there a review and renewal procedure?

Access to the Student Records and Schedule of Classes files are subject to review under a renewal procedure which is initiated by the Office of the Registrar.

Who does an employee contact with questions about access?

The first contact should be with the Data Supervisor.

Questions regarding assistance with computer equipment and hook-up should be directed to University Computing Services Help Desk. Also, if an authorized access user has forgotten his/her password, the person should contact UCS.

Questions about specific access to information or interpretations of the Release of Student Information policy should be directed to the Office of the Registrar.

07.21.94

Office of the Registrar
Indiana University-Bloomington

RELEASE OF STUDENT INFORMATION POLICY [Requestor should keep this section for reference.]

This policy was approved by the University Faculty Council, March 29, 1977. In compliance with Section 438 of the "General Education Provisions Act" (as amended) entitled "Family Educational Rights and Privacy Act," the following constitutes the institution's policy which instructs the student in the procedures available to provide appropriate access to personal records, while protecting their confidentiality.

A. Certain definitions and principles contained in the law and proposed guidelines are specifically adopted in the policy:

   1. "Student" is defined as one who has attended or is attending Indiana University and whose records are in the files of the University.

   2. "Educational records" do not include files retained by individuals which are not accessible to any other person except a substitute faculty/staff member.

   3. "Public information" is limited to name; address; phone; major field of study; dates of attendance; admission or enrollment status; campus; school, college, or division; class standing; degrees and awards; activities; sports; and athletic information. Records of arrests and/or convictions and traffic accident information are public information and may be released to anyone making inquiry.

   4. "Record" means any information or data recorded in any medium, including but not limited to handwriting, print, tapes, file, microfilm, and microfiche.

B. Public information shall be released freely unless the student files the appropriate form requesting that certain public information not be released. This form is available at [here each campus will list its own offices and locations appropriate for that campus]. Public information which cannot be restricted includes the name, enrollment status, degrees, and dates of attendance.

C. All students have records in one or more of the following offices, maintained by the administrative officer listed [here each campus will list its appropriate offices, locations, and officers]. [This section includes the permanent record, school or college files, etc.]

D. Some departments maintain records separate from the school or college. A list of departments which have separate records, their location, and person responsible for the record may be obtained from the office of the dean of the school or college in which the department is located.

E. Students may also have records in the following places [here each campus will list its appropriate offices]. [This section includes offices such as financial assistance, bursar, placement, and police.]

F. The privacy of all records may be broken at a time of emergency defined in terms of the following considerations:

   1. The seriousness of the threat to health or safety

   2. The need for access to the record in meeting the emergency

3. Whether the person requesting the records is in a position to deal with the emergency

4. The extent to which time is of the essence in dealing with the emergency

G. A student's record is open to the student, with the following exceptions:

1. Confidential letters of recommendation placed in files prior to January 1, 1975

2. Record of parents' financial status

3. Employment records; see H below

4. Medical and psychological records; see I below

5. Some items of academic record under certain conditions; see J below

H. The employment records excluded from accessibility are records kept in the normal course of business which relate exclusively to persons as employees and are not used for any other purposes.

I. Medical and psychological records are presently governed by State Statute, *Burns Indiana Statutes*, 1971 Code Edition, 34-1-14-5 and 25-33-1-17, which rigidly protects their confidentiality. They are not available to anyone other than those providing treatment, but can be reviewed by a physician or appropriate professional of the student-patient's choice.

J. To ensure the validity and confidentiality of references prepared off-campus and on-campus, certain documents may carry waivers, signed by the student relinquishing the right of access to the document.

1. Waivers are subject to the following conditions:

    a. Waivers can be signed only for the specific purposes of application for admission, candidacy for honor or honorary recognition (including financial aid based at least in part on merit), and candidacy for employment.
    b. Waivers cannot be required.
    c. The student shall be told, upon request, the names of those supplying references.

2. All items in the academic record not covered by waivers are open to the student. Material not covered by waivers may not be protected by keeping it out of the student's file.

K. Student records are open to members of the faculty and staff who have a legitimate need to know their contents, except where access is prohibited by special policies such as those governing medical and psychological records.

1. The determination of "a legitimate need to know" will be made by the person responsible for the maintenance of the record. This determination must be made scrupulously and with respect for the individual whose records is involved.

2. Academic documents inaccessible to students (because the documents have been filed before January 1, 1975 or are segregated by waivers) are to be used only for the purpose for which they were prepared.

L. The University has established the following procedures enabling the student to have access to his record and has provided for interpretation and challenge:

1. The student may see his or her record by filling out a request form at the office where the record of interest is maintained.
2. Access is to be granted promptly and no later than thirty days from the date of request.
3. The student may make the request in person or by mail.
4. The student may obtain copies upon request (for which the University may charge).
5. The student may request and receive interpretation of his or her record from the person (or designee) responsible for the maintenance of the record.
6. If the student considers the record faulty, he or she can request and receive an informal and/or formal hearing of the case to the end that the record will be corrected if judged faculty or in violation of privacy:
    a. The informal hearing will be in conference with the person (or his or her designee) responsible for the maintenance of the record and--where appropriate--the party or parties authorizing the record segment in question.
    b. The student may request formal hearing by obtaining from the Dean for Student Services' Office a request form on which he or she must designate the location of the record in question and a brief explanation of the reason for faulting the record. A panel of not fewer than ten Hearing Officers will be appointed by the chief administrative officer for each campus. The Dean for Student Services will forward a copy of the request to the person responsible for the record and will provide the student and the keeper of the record with three names of Hearing Officers. The parties (student and keeper of the record in challenge) shall each strike one name; the remaining Hearing Officer shall conduct an administrative hearing with both parties present.

       The hearing shall be held within a reasonable period of time; notice of the date, place, and time must be given reasonably in advance. The student shall be afforded a full and fair opportunity to present relevant evidence and may be assisted or represented by any person of his or her choosing (including an attorney at his or her own expense). A written decision based solely upon the evidence presented shall be prepared within a reasonable amount of time and shall include a summary of the evidence and the reasons for the decision. The judgment of the Hearing Officer shall be final, and the record shall be changed or retained as recommended.

       If the Institution decides the information is accurate, it shall inform the student of his or her right to place in his or her educational record a statement commenting upon the information, and/or noting any reasons for disagreeing with the decision. Any statement of this sort shall be maintained as long as the student's educational record or contested portion is maintained; if the student's educational record or contested portion is disclosed to any party, the student's statement shall also be disclosed.

M. Normally, records can be released--or access given--to third parties (i.e., anyone not a member of the faculty and staff) only at the written request of the student.

1. Without the consent of the student releases to third parties may be given only as follows:

   a. To parents of students who are dependents as defined by IRS standards
   b. To federal officers as prescribed by law
   c. As required by state law
   d. To research projects on behalf of educational agencies for test norms, improving instruction, etc. (provided that the agencies guarantee no personal identification of students)
   e. To accrediting agencies carrying out their functions
   f. In response to a judicial order or lawfully issued subpoena (provided that the student is notified prior to compliance or provided that a reasonable attempt to notify the student has been made)
   g. By I.U. Police to other law enforcement agencies in the investigation of a specific criminal case

2. A student may secure from the Registrar's Office a "consent form" authorizing the release of specified records to specific individuals.

3. A notification of releases made to third parties must be kept in the student's record. This notification is open only to the student and the person in charge of the record.

4. The third party must be informed that no further release of personally identifiable data is authorized without the written consent of the student.

N. Nothing in this policy requires the continued maintenance of any student record. However, if under the terms of this policy a student has requested access to the record, no destruction of the record shall be made before access has been granted to the student. Persons in charge of records should ensure that only pertinent items are retained in student files.

Appendix 13

SAMPLE AGREEMENT TO CHANGE SSN TO ANOTHER PERSONAL IDENTIFIER

Upon your request, (Institution) will change your current I.D. number which is

________________________ to ________________________
(old number) (new number)

All of the computerized information which (Institution) holds on you in the student records, financial aid, business, housing, and dining service computer systems, whichever are applicable, and any reports generated from those systems which utilize I.D. numbers, will use the new number.

(Institution) will not release your old I.D. number to any outside agencies, but will make a note of what your old I.D. number was on your academic record for internal use only. By signing this form, you also understand and affirm that:

- you will use the new I.D. number in any future transactions involving (Institution) which require an I.D. number;
- certain problems may arise if we receive information requests from outside agencies which only contain your old I.D. number. You will not hold (Institution) responsible for any such problems which may arise due to this change in I.D. numbers.
- you are not receiving any type of financial aid from the State or federal governments.

for (Institution) ________________________ Date __________________

Student ____________________________ Date __________________

Appendix 14

SAMPLE INSTITUTIONAL FERPA POLICY STATEMENT

DEFINITIONS (Optional)

For the purposes of this policy, State University has used the following definitions of terms.

Student - any person who attends of has attended State University.

Education records - any record (in handwriting, print, tapes, film, or other medium) maintained by State University or an agent of the university which is directly related to a student, except:

1. A personal record kept by a staff member if it is kept in the sole possession of the maker of the record and is not accessible or revealed to any other person except a temporary substitute for the maker of the record.
2. An employment record of an individual whose employment is not contingent on the fact that he or she is a student, provided the record is used only in relation to the individual's employment.
3. Records maintained by the State University Unit if the record is maintained solely for law enforcement purposes, is revealed only to law enforcement agencies of the same jurisdiction, and the Unit does not have access to education records maintained by the University.
4. Records maintained by the Health Clinic if the records are used only for treatment of a student and made available only to those persons providing the treatment.
5. Alumni records which contain information about a student after he or she is no longer in attendance at the University and which do not relate to the person as a student.

ANNUAL NOTIFICATION (Required)

(NOTE: A college or university is required by Section 99.7 of the FERPA regulations to provide students annual notification of their FERPA rights. Its policy must include the method it will use to inform students. The following are sample methods for inclusion in policy):

- Students will be notified of their FERPA rights annually by publication in the student handbook; or
- Students will be notified of their FERPA rights annually by publication in the student bulletin; or
- Students will be provided a statement of their FERPA rights in their registration packets.

PROCEDURE TO INSPECT EDUCATION RECORDS (Required. Method optional)

Students may inspect and review their education records upon request to the appropriate record custodian.

Students should submit to the record custodian or an appropriate University staff person a written request which identifies as precisely as possible the record or records he or she wishes to inspect.

The record custodian or an appropriate University staff person will make the needed arrangements for access as promptly as possible and notify the student of the time and place where the records may be inspected. Access must be given in 45 days or less from the receipt of the request.

When a record contains information about more than one student, the student may inspect and review only the records which relate to him.

RIGHT OF UNIVERSITY TO REFUSE ACCESS

State University reserves the right to refuse to permit a student to inspect the following records:

1. The financial statement of the student's parents.
2. Letters and statements of recommendation for which the student has waived his or her right of access, or which were placed in file before January 1, 1975.
3. Records connected with an application to attend State University or a component unit of State University if that application was denied.
4. Those records which are excluded from the FERPA definition of education records.

REFUSAL TO PROVIDE COPIES

(NOTE: With an understanding that it cannot deny students access to their records, a college or university is required to describe the circumstances in which it may deny students a copy of their education records. The following are examples.)

State University reserves the right to deny transcripts or copies of records not required to be made available by the FERPA in any of the following situations:

1. The student lives within commuting distance of State University.
2. The student has an unpaid financial obligation to the University.
3. There is an unresolved disciplinary action against the student.

FEES FOR COPIES OF RECORDS

The fee for copies will be ______ per page. (NOTE: A college or university may not charge for search and retrieval of the records; however, it may charge for copying time and postage.)

TYPES, LOCATIONS, AND CUSTODIANS OF EDUCATION RECORDS
(Listing Required. Types, Locations, and Custodians are examples.)

The following is a list of the types of records that the University maintains, their locations, and their custodians.

Types	Location	Custodian
Admission Records	Registrar's Office Central Administration Building 100 University Avenue	Registrar
Cumulative Academic Records (Current students and five years after graduation or withdrawal)		
Cumulative Academic Records (Former students; over five years after graduation or withdrawal)	University Archives Beta Memorial Library 203 Church Street	Chief Archivist
Health Records	Student Clinic University Hospital Elm Drive	Director, University Health Services
Financial Records	Bursar's Office Central Administration Building 100 University Avenue	Bursar
Placement Records	Graduate Placement Office Alumni Division Central Administration Building 100 University Avenue	Director of Placement
Progress Records	Dean's Office At each College or Department	Dean
	Faculty Office At each College or Department	Instructor
Disciplinary Records	Student Affairs Office Central Administration Building 100 University Avenue	Director, Student Affairs
	University General Counsel Office Central Administration Building 100 University Avenue	Vice President for Legal Affairs
Occasional Records (Student education records not included in the types above such as minutes of faculty committee meetings, copies of correspondence in offices not listed, etc.)	The appropriate official will collect such records, direct the student to their location, or otherwise make them available for inspection and review	The University staff person who maintains such occasional systems records

DISCLOSURE OF EDUCATION RECORDS (Required)

State University will disclose information from a student's education records only with the written consent of the student, except:

1. To school officials who have a legitimate educational interest in the records. (Note: A college or university is required to specify the criteria for school officials and for legitimate educational interests. The following are examples.)

   A school official is:

   - A person employed by the University in an administrative, supervisory, academic or research, or support staff position.
   - A person elected to the Board of Trustees.
   - A person employed by or under contract to the University to perform a special task, such as the attorney or auditor.

   A school official has a legitimate educational interest if the official is:

   - Performing a task that is specified in his or her position description or by a contract agreement.
   - Performing a task related to a student's education.
   - Performing a task related to the discipline of a student.
2. To officials of another school, upon request, in which a student seeks or intends to enroll. (Note: FERPA requires a college or university to make a reasonable attempt to notify the student of the transfer unless it states in its policy that it intends to forward records on request.)
3. To certain officials of the U.S. Department of Education, the Comptroller General, and state and local educational authorities, in connection with certain state or federally supported education programs.
4. In connection with a student's request for or receipt of financial aid, as necessary to determine the eligibility, amount or conditions of the financial aid, or to enforce the terms and conditions of the aid.
5. If required by a state law requiring disclosure that was adopted before November 19, 1974.
6. To organizations conducting certain studies for or on behalf of the university.
7. To accrediting organizations to carry out their functions.
8. To parents of an eligible student who claim the student as a dependent for income tax purposes.
9. To comply with a judicial order or a lawfully issued subpoena.
10. To appropriate parties in a health or safety emergency.
11. To an alleged victim of any crime of violence of the results of any institutional disciplinary proceeding against the alleged perpetrator of that crime with respect to that crime.

RECORD OF REQUESTS FOR DISCLOSURE (Required)

State University will maintain a record of all requests for and/or disclosure of information from a student's education records. The record will indicate the name of the party making the request, any additional party to whom it may be redisclosed, and the legitimate interest the party had in requesting or obtaining the information. The record may be reviewed by the parents or eligible student.

DIRECTORY INFORMATION

(NOTE: Disclosure of Directory Information is optional. If the option is exercised, a college or university is required to list the items it has designated as Directory Information.)

State University designated the following items as Directory Information: student name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, most recent previous school attended, and photograph. The University may disclose any of those items without prior written consent, unless notified in writing to the contrary by ________(date).

CORRECTION OF EDUCATION RECORDS (Required)

(NOTE: A college or university must include in its policy a procedure for the correction of records.)

Students have the right to ask to have records corrected that they believe are inaccurate, misleading, or in violation of their privacy rights. Following are the procedures for the correction of records:

1. A student must ask [appropriate official of] State University to amend a record. In so doing, the student should identify the part of the record he/she wants changed and specify why he/she believe it is inaccurate, misleading or in violation of his or her privacy or other rights.
2. State University may comply with the request or it may decide not to comply. If it decides not to comply, State University will notify the student of the decision and advise him/her of his/her right to a hearing to challenge the information believed to be inaccurate, misleading, or in violation of the student's rights.
3. Upon request, State University will arrange for a hearing, and notify the student, reasonably in advance, of the date, place, and time of the hearing.
4. The hearing will be conducted by a hearing officer who is a disinterested party; however, the hearing officer may be an official of the institution. The student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The student may be assisted by one or more individuals, including an attorney.
5. State University will prepare a written decision based solely on the evidence presented at the hearing. The decision will include a summary of the evidence presented and the reasons for the decision.

6. If State University decides that the challenged information is not inaccurate, misleading, or in violation of the student's right of privacy, it will notify the student that he/she has a right to place in the record a statement commenting on the challenged information and/or a statement setting forth reasons for disagreeing with the decision.
7. The statement will be maintained as part of the student's education records as long as the contested portion is maintained. If State University discloses the contested portion of the record, it must also disclose the statement.
8. If State University decides that the information is inaccurate, misleading, or in violation of the student's right of privacy, it will amend the record and notify the student, in writing, that the record has been amended.

Appendix 15

SAMPLE NOTICE TO STUDENT OF INTENT TO COMPLY WITH A SUBPOENA

Dear [Student]:

ABC College has just received a subpoena (copy attached) requiring us to produce your records. If you wish to object to the release of your records by the College, you or your attorney must file a motion to that effect [in the court from which the subpoena was issued]. If we have not heard from you by [date on which materials will be delivered or placed in the mail], we intend to comply with the terms of the subpoena. If you file a motion to quash or otherwise object to the subpoena please send us copies of the relevant papers at your earliest convenience.

Sincerely yours,

(Courtesy of Philip Burling, Attorney, Foley, Hoag, and Elliott, Boston.)

Bibliography

American Association of Collegiate Registrars and Admissions Officers. 1991. "1991 Survey of AACRAO Member Institutions on FERPA Policies and Practices." Washington, DC: AACRAO.

______________. 1976. *A Guide to Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended.* Washington, DC: AACRAO.

American Association of Collegiate Registrars and Admissions Officers and National Association of College and University Attorneys. 1984. *Legal Guide for Admissions Officers and Registrars.* Washington, DC: AACRAO and NACUA.

American Jurisprudence. 1991 (2d ed.). Volume 81. Rochester, NY: Lawyers Cooperative Publishers.

Burling, P. Subpoenas and the Buckley Amendment. Paper presented at the Annual Meeting of the American Association of Collegiate Registrars and Admissions Officers, April 1994, Boston, Massachusetts.

Federal Civil Judicial Procedures and Rules, Title 28—Judiciary and Judicial Procedure. 1991. (rev. ed.). St. Paul, Minn.: West Publishing Co.

Federal Register. Part II (May 9, 1980) 45 (92): 30911-30918.

Garfinkel, S. L. 1987. An Introduction to Computer Security, Part I. *Practical Law* (September): 39-48.

______________. 1987. An Introduction to Computer Security, Part II. *Practical Law* (October): 57-67.

Johnson, T. P. 1993. Managing Student Records: The Courts and the Family Educational Rights and Privacy Act of 1974. *Education Law Reporter* (February 11): 1-18.

National Association of Student Financial Aid Administrators. 1989. *NASFAA Encyclopedia of Student Financial Aid.* Washington, DC: NASFAA.

Nolan, J. and J. Nolan-Haley. 1990. *Black's Law Dictionary* (6th ed.). St. Paul, Minn.: West Publishing Co.

Pennsylvania Rules of Court. 1991. St. Paul, Minn.: West Publishing Co.

Rooker, L. S. Family Educational Rights and Privacy Act (FERPA). Papers presented at the Annual Meeting of the American Association of Collegiate Registrars and Admissions Officers, 1989-1993.

Rothenberger, J. Transmission Security and Acknowledgment. Paper presented at the AACRAO SPEEDE Workshop, October 1994, Madison, Wisconsin.

U.S. Department of Education. 1994. *Education Data Confidentiality: Two Studies.* National Center for Education Statistics. Washington, DC: NCES.

______________. 1993. SPEEDE/ExPRESS: An Electronic System for Exchanging Student Records. National Center for Education Statistics. Washington, DC: NCES.

Van Tol, J. (ed.). 1989. *College and University Student Records: A Legal Compendium.* Washington, DC: National Association of College and University Attorneys.

FERPA Index

-A-

AACRAO, 11, 12, 14, 17, 40
access, computer, 13, 14, 17, 19-20, 33, 41
access, student worker, 12, 19
accrediting agencies, 8, 40
Act. *See FERPA*
admissions files, 16, 36, 37, 43
admitted students, 16
advising, 12, 33
amendments, 1, 5-6, 7, 9-10, 20-21
American Association of Collegiate Registrars and Admissions Officers. *See AACRAO*
American Association of Universities, 14
American National Standards Institute Accredited Standards Committee X12, 11
attendance, 3
audits of programs, 8, 14-15, 18, 43

-B-

Buckley Amendment, 1, 35, 42

-C-

Campus Awareness and Campus Crime Act (1990), 1, 20
categories of directory information, 6, 9
CFR. *See Code of Federal Regulations*
challenge to records, 2, 6, 9
Code of Federal Regulations, 3
confidentiality, 7, 11, 12, 13, 14, 33, 39, 42
credential information, 12
credential transmission, comparison of, 11
crime, 9-10, 20

-D-

databases, state, 14
data system requirements, 1
degree verification. *See verification of*
Department of Education, 1, 2, 6
dependency status, 8, 9, 14, 41, 42
destruction of information, 7, 13, 15, 16, 17, 40
directory information, 3, 5, 6, 9, 14, 18, 19, 20, 21, 24, 25, 30, 38, 39-40, 42, 43, 44
disciplinary action, 3, 14
disclosure, 3, 8-9, 10, 11; exceptions to, 8-9, 19
disclosure, records for, 7, 10-11, 14, 15, 18-19, 20
disclosure, refusal, 9
disclosure, student consent to, 6, 12, 17, 18, 19, 34, 37
disclosure: to authorized government officials, 8, 11, 14-15, 19; to parents, 1, 5, 8, 9, 13-14, 19, 33, 34; to third party, 8, 9, 10, 12, 13, 17, 19, 36, 37, 40, 41, 42, 43, 44
disclosure, without written consent, 8-9, 12, 14, 15, 17, 18, 19, 20, 42

-E-

EDI, 3, 11
education records, challenge to, 2, 5-6, 9, 10
education records, definition of, 1, 3-4, 10, 14, 17
education records, electronic transmission of, 11, 12, 13, 14, 15, 16, 33, 40-41
education records, location of, 5, 6, 16, 20
education records, multiple students, 7
education records, student access to, 1, 2, 5-6, 16, 20, 44
education records, protection of student rights, 5, 11, 14, 21, 37, 40
educational institutions, 3
electronic data interchange, 3, 11
electronic transmission, institutional policy, 11, 14, 15, 17, 33, 40-41
elementary level, electronic data interchange at, 11
emergencies, 9, 14, 15, 17, 19, 35, 42
employee records, 3, 45
enrolled students, 16, 21, 35, 37, 40, 41, 43
ExPRESS, 11
Exchange of Permanent Records Electronically for Students and Schools, 11

-F-

facsimile. *See fax transmission*
faculty, 12, 13, 14, 20, 24, 39, 41
Fair Debt Collection Practices Act, 38
Family Educational Rights and Privacy Act of 1974. *See FERPA*
Family Policy Compliance Office, 2, 6, 12, 13, 14, 15, 18-19, 40
fax transmission, 12, 33, 40-41
federal income tax form, 9, 13, 41
Federal Rules of Civil Procedures, 21
fee assessment, 5, 20
FERPA, 1, 2, 4, 5-6, 12, 13, 14, 15, 18, 23
Final Regulations, 1988, 1, 3, 14, 15, 16
financial aid, 4, 8, 14, 15, 37, 41
financial hold, 5, 21, 36-37, 38, 43, 44
financial information, parental, 14
forms, institutional, 10
funded programs, federal, 1-2, 3, 14-15, 18

-G-

Goldman v. Goldman, 22
grade reporting, 17, 19, 20, 28, 34, 39
graduate rights, 18, 20-21
graduation rates, 20
grievances, 9-10

-H-

health care, 14, 15, 18
hearing, legal, 5-6, 9-10, 20-21

Higher Education Amendments of 1992, 1
high school, postsecondary feedback to, 1, 8, 18, 30, 38

-I-

Immigration and Naturalization Service, 38, 45
information, categories of, 6
inspection of records, 6-7, 17, 20
institutional obligations, 1-2, 5-6, 7, 8-9, 10, 11, 12, 13, 14, 18, 20, 21, 39
institutional policy, FERPA, 4, 5-6, 7, 9, 15, 44
institutional policy, written, 5-6, 9, 10, 12, 13, 15, 17
Internal Revenue Code, 8, 9, 13, 14
IRS summons, 17
issues, FERPA, 11, 12

-K-

Krebbs v. Rutgers, 15

-L-

law enforcement agencies, 3, 4, 8-9, 14, 17, 21-23, 35-36, 42-43
legal records, 1, 4, 14, 15, 16, 20
legitimate educational interest, 4, 5, 9, 10, 11, 12-13, 18-19, 24, 38-39, 42
letter of recommendation, 7, 13, 14, 17, 24, 37, 43
loan, defaulted, 38

-M-

media access, 17, 28, 39-40
medical records, 3-4, 14, 15

-N-

National Direct Student Loan Act, 38, 44
nonconsensual disclosure, 8, 14-15, 17, 18
nondirectory information, 12, 13, 17, 18, 20, 23, 38
nondisclosure, requests for, 6, 20, 21, 36, 37, 43, 44
nondisclosure rights, 6, 20, 21, 42, 43
non-postsecondary institutional rights, 4
notes of school officials, 3, 10, 16
notification to students, 2, 5-6, 10, 11, 16, 22, 23, 39, 43

-O-

Open Record laws, 15

-P-

parent, definition of, 4
parental rights, 4, 8, 9, 13-14, 14-15, 17, 33, 41, 42
Participant Table, 11
party, 4
penalties for violations, 2, 3, 18
Personal Identification Number, 20, 37, 44
personally identifiable information, 2, 4, 5, 6, 8, 12, 14, 15, 18, 19, 20, 23
Postsecondary Feedback Act, 18
postsecondary institutions, 4, 31, 40
prior notification, 23
privacy, 14, 17, 34, 40
Privacy Act of 1974, 15
public information. *See directory information*

-R-

recommendations, 13. *See also letter of recommendation*
record, inspection of, 7, 20
record retention schedule, 10, 14, 17, 18-19
references in education records, 36, 40-41
Regulations, The, 4
requests, records of, 5, 10, 12, 17, 18, 19
research, 8, 14-15, 18, 19, 29, 40

-S-

scholarships, 10, 19, 28, 38
school officials, 4, 5, 8, 11, 12-13, 16, 17, 19, 25, 38, 39, 43
security, 11-12, 13, 15, 19-20
social security number, 4, 14, 15, 19
SPEEDE, 11, 12, 15
SPEEDE/EDI, 11, 12
staff, education of, 11-12, 13, 17, 39, 41
standard, EDI, 11, 12
Standardization of Postsecondary Education Electronic Data Exchange. *See SPEEDE*
state agencies, 14-15, 16
state law, 2, 8, 13, 15, 16
student, 4. See also *student, eligible*
student directories, 14, 20
student, eligible, 4, 16, 19, 37, 41
student files. *See student record*
student record, 4, 7, 10, 11; amending, 1, 5, 6, 7, 10
student rights, 1, 6-7, 10, 20-21, 22-23, 36, 37, 41, 42;
deceased, 17, 32, 39, 40; former, 6, 20-21, 23, 24, 34, 35, 39, 40
student schedules, 35, 42-43
student statement, 10
students, limitations on, 7
students, notification of, 5-6, 26, 40; waiver of, 7
subpoenas, 8-9, 13, 14, 17, 19, 21-23, 25-27, 39, 42
Survey of AACRAO Member Institutions on FERPA Policies and Practices, 12, 14, 41
surveys, 28-29, 38

-T-

telephone disclosure, 12, 19, 20, 37, 41, 44
terms, definition of, 3-4
time limits, 6, 9-10, 17, 21, 22-23, 44
Transaction Sets, 11
transcripts, 11, 12, 13, 34, 34, 38, 41

-U-

United States Code, 4
U.S.C., 4

-V-

verification of, 12, 19, 36, 39, 40-41, 42, 43, 44
Veterans Administration, 8
violations, 10, 13, 18, 19, 22

-W-

waiver of rights, 7, 37, 44
work-study, 3
written complaints, 6
written consent, 5, 8, 11, 12, 13, 17, 19, 38, 39, 41, 45

ORDER FORM

SHIP TO:					
Name					
Institution					
Address					
City/State/Zip+4					
Phone		FAX			
PLEASE SEND:					
ITEM	No.	x	PRICE Nonmember (Member)	=	TOTAL
Guidelines for Postsecondary Institutions for Implementation of the Family Educational Rights and Privacy Act of 1974 as Amended		x	$35 ($25)	=	
				Shipping and Handling Fees*	
				TOTAL	

PAYMENT METHOD (check one box on first line):							
☐	Check	☐	MasterCard	☐	VISA	☐	American Express
Card Number						Exp. Date	
Cardholder				Official Signature			

Send orders to: AACRAO Distribution Center
P.O. Box 231
Annapolis Junction, MD 20701
Phone: (301) 490-7651
FAX: (301) 206-9789

*Shipping and Handling Fees: $5 for orders $25-$50 or 10% for orders over $50 ($7.50 or 15%, respectively, for foreign orders).

Allow 2-4 weeks for delivery. Prices are subject to change without notice.

AACRAO
1 9 1 0

**AMERICAN ASSOCIATION OF
COLLEGIATE REGISTRARS AND
ADMISSIONS OFFICERS**

**One Dupont Circle, NW
Suite 330
Washington, DC 20036-1171**

**(202) 293-9161
FAX: (202) 872-8857**

ISBN 0-929851-26-9